

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

|               |     |                    |
|---------------|-----|--------------------|
| GREE, INC.,   | ) ( | CIVIL ACTION NOS.  |
|               | ) ( | 2:19-CV-70-JRG-RSP |
| PLAINTIFFS,   | ) ( | 2:19-CV-71-JRG-RSP |
|               | ) ( |                    |
| VS.           | ) ( |                    |
|               | ) ( | MARSHALL, TEXAS    |
| SUPERCELL OY, | ) ( | SEPTEMBER 15, 2020 |
|               | ) ( | 1:09 P.M.          |
| DEFENDANTS.   | ) ( |                    |

TRANSCRIPT OF JURY TRIAL

VOLUME 8 - AFTERNOON SESSION

BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP

UNITED STATES CHIEF DISTRICT JUDGE

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P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Mr. Kohm, are you prepared to continue with your direct examination?

MR. KOHM: Yes, I am, Your Honor.

THE COURT: All right. You may return to the podium.

Mr. Friedman, if you'd come forward and return to the witness stand. I remind you, sir, you remain under oath.

Mr. Fitzpatrick, if you'd bring in the jury, please.

COURT SECURITY OFFICER: Yes, sir.

All rise.

(Jury in.)

THE COURT: Welcome back from lunch, ladies and gentlemen. Please have a seat.

All right. We'll continue with the direct examination of Mr. Stacy Friedman by the Defendant.

Mr. Kohm, you may continue.

MR. KOHM: Thank you, Your Honor.

Mr. Smith, can you pull up Claim 1 of the '481 patent?

01:10:26 1 STACY FRIEDMAN, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

01:10:26 2 DIRECT EXAMINATION CONTINUED

01:10:29 3 BY MR. KOHM:

01:10:29 4 Q. Mr. Friedman, do you believe that Magic discloses Claim  
01:10:37 5 Element 1e of the '481 patent?

01:10:40 6 A. Yes, I do.

01:10:41 7 Q. What is -- what in Magic discloses that limitation?

01:10:45 8 A. Well, the materials that I've reviewed indicated that  
01:10:48 9 Magic was a video game. And so there -- it runs on a  
01:10:52 10 computer with a display processing unit that specifically  
01:10:57 11 displays the -- and it's talking about the corresponding  
01:11:01 12 first parameter value here.

01:11:03 13 And that's the toughness or the attack of the --  
01:11:06 14 yeah, the -- the hit points basically on the -- on the  
01:11:09 15 characters as they're in the field.

01:11:10 16 Q. And what is the enemy character on the second field?

01:11:13 17 A. Right. So there's the players and the -- and your  
01:11:17 18 opponent both have cards that get placed into the field,  
01:11:20 19 and you can see through the screenshots of the manual that  
01:11:24 20 they're -- they both have the power and the toughness  
01:11:28 21 displayed.

01:11:29 22 Once a card is played, according to the Magic  
01:11:33 23 manual, it becomes the character that was summoned by the  
01:11:37 24 card.

01:11:38 25 Q. And, in your opinion, does Magic disclose Claim

01:11:44 1 Limitation 1f of the '481 patent?

01:11:46 2 A. Right. This one is about selecting of the new game  
01:11:54 3 content. In this claim -- in this patent, unlike the '137,  
01:11:58 4 this one is talking about being able to select a  
01:12:01 5 replacement -- that is, you draw a replacement card after  
01:12:05 6 you play a first one, and then you can also play that  
01:12:07 7 second card.

01:12:08 8 And the rules for being able to play that second  
01:12:11 9 card are whether the second parameter value -- that is, the  
01:12:14 10 cost of that replacement card -- is still affordable --  
01:12:19 11 that is, whether the cost of that new game content  
01:12:25 12 alternative is smaller than the third parameter value,  
01:12:28 13 which in Magic is the mana pool, in which the second  
01:12:32 14 parameter value of the removed game content has been  
01:12:34 15 subtracted.

01:12:35 16 In other words, if your mana pool still has enough  
01:12:40 17 mana after you've played the first card to afford the  
01:12:43 18 second card, then you can play the second card.

01:12:46 19 Q. And does Magic disclose that limitation?

01:12:48 20 A. Magic discloses the ability to pay for cards for -- at  
01:12:52 21 all times, regardless of what order they're played in, yes.

01:12:58 22 Q. And what about BattleForge, does that disclose Claim  
01:13:02 23 Limitation 1e of the '41 -- '481 patent?

01:13:07 24 A. Yes, it does. So in BattleForge, the -- the cards are  
01:13:14 25 at the bottom of the screen. And then when you play them,

01:13:17 1 they -- they go on to the field. And you can see hit bars,  
01:13:21 2 green over the top of the player characters and red over  
01:13:24 3 the top of your opponents. We saw that in one of the  
01:13:28 4 screenshots before.

01:13:29 5 So that would be the corresponding first parameter  
01:13:31 6 value is the -- the hit points of those characters.

01:13:33 7 And there's at least one player character, and  
01:13:37 8 then there's an enemy character in that screenshot that we  
01:13:41 9 saw.

01:13:41 10 Q. And what would be the second field?

01:13:43 11 A. Oh, yes, the second field is the battlefield, not the  
01:13:50 12 hand of cards at the bottom of the screen, but what you saw  
01:13:51 13 above that.

01:13:52 14 Q. What about Limitation 1f of the '481 patent, does  
01:13:55 15 BattleForge disclose that?

01:13:56 16 A. Right. So when you play a card in BattleForge, the  
01:14:00 17 power cost of that card is subtracted from the meter up at  
01:14:03 18 the top of the screen. And if there are -- if there is  
01:14:08 19 still enough power to afford the next card that you want to  
01:14:11 20 play, then at that point, you can also play that next card.

01:14:15 21 Q. Thank you.

01:14:15 22 MR. KOHM: Mr. Smith, can you pull up Claim 4 of  
01:14:19 23 the '481 patent, please?

01:14:22 24 Q. (By Mr. Kohm) In your opinion, does Magic disclose  
01:14:25 25 Claim 4 of the '481 patent?

01:14:27 1 A. Yeah. So what this is talking about is displaying the  
01:14:35 2 game content in the second field -- that is, the  
01:14:37 3 battlefield -- in such a way that it's in a different  
01:14:40 4 state. All it has to be is a different state of being  
01:14:46 5 displayed is in the hand.

01:14:47 6 So whatever it looks like in the hand, as long as  
01:14:49 7 it's different in the second field, then that's what the  
01:14:51 8 claim is about.

01:14:51 9 So in Magic, when you play a card, the first thing  
01:14:55 10 that happens is it goes into the field. And the first --  
01:14:58 11 the rules of Magic say that the first time you play a card  
01:15:03 12 for that turn, it has what's called summoning sickness,  
01:15:06 13 which means it can't do anything.

01:15:07 14 And that's displayed with a spiral over the card.  
01:15:07 15 So that's a different state of being displayed in the  
01:15:11 16 second field, as in the first. And I think we have a  
01:15:14 17 screenshot of that.

01:15:22 18 MR. KOHM: Mr. Smith, can you pull up DX-566 at  
01:15:27 19 182?

01:15:32 20 Q. (By Mr. Kohm) Is this that screenshot?

01:15:35 21 A. This is the description of the summoning sickness  
01:15:39 22 feature.

01:15:40 23 Q. And going back to Claim 4, does BattleForge disclose  
01:15:44 24 that claim?

01:15:44 25 A. Right. In BattleForge, if you recall the screens that



01:15:48 1 we saw there, you have the row of cards at the bottom of  
01:15:52 2 the screen, but then when you play them, they -- the card  
01:15:56 3 swoops forward and then turns into little troops on the  
01:15:59 4 field. So the troops on the field obviously look different  
01:16:02 5 than the cards that are in the hand.

01:16:04 6 But also, as the card is being played, it -- it  
01:16:07 7 blows up to a full-size card. I think we saw that in one  
01:16:11 8 of the screenshots. And if we have the animation, it -- it  
01:16:14 9 sort of flies up and then lands on the field. And that's  
01:16:18 10 when it turns into the -- the player characters, the  
01:16:22 11 troops.

01:16:22 12 And as that's happening, that card is being  
01:16:25 13 displayed in a different state than it was displayed in the  
01:16:28 14 first field, or mainly the hand of cards.

01:16:33 15 Q. Turning to Claim 5, does Magic disclose that claim --  
01:16:40 16 that claim?

01:16:42 17 A. Claim 5 is talking about having -- well, there's two  
01:16:47 18 elements here. First is: Wherein the control unit enables  
01:16:51 19 selection of the new game content before a predetermined  
01:16:55 20 time has elapsed.

01:16:56 21 So, in other words, there's a timer.

01:16:58 22 And, second is the rest of it, which I'm not going  
01:17:01 23 to repeat because that's actually a duplicate of what was  
01:17:05 24 already in Claim 1. So we've already talked about that  
01:17:08 25 last part with regard to Claim 1.

01:17:09 1 The timer of Magic actually has a phase bar where  
01:17:13 2 as you're playing the game, the -- the specific step that  
01:17:18 3 you're on is indicated by a highlight as you go through the  
01:17:22 4 turn.

01:17:24 5 And, you know, to the extent that that's not a  
01:17:27 6 sufficient disclosure of a timer, I think one of ordinary  
01:17:31 7 skill in the art would have understood that games with  
01:17:35 8 turns in the past had timers associated with them just to  
01:17:39 9 keep the game flowing and didn't want someone to sit there  
01:17:44 10 forever.

01:17:45 11 MR. KOHM: Mr. Smith, can you pull up DX-566 at  
01:17:50 12 111?

01:17:50 13 Q. (By Mr. Kohm) Is that the phase bar?

01:17:52 14 A. That is.

01:17:53 15 Q. And do you think that -- do you believe that  
01:17:55 16 BattleForge also discloses Claim 5?

01:17:57 17 A. BattleForge does disclose Claim 5. BattleForge  
01:18:01 18 discloses that certain of its gameplay issues actually have  
01:18:02 19 limit or time limits on them directly. So you only have 26  
01:18:07 20 minutes or 30 minutes to complete the whole level. If you  
01:18:09 21 don't do that, then the game is over.

01:18:12 22 MR. KOHM: Mr. Smith, can you pull up DX-708 at  
01:18:18 23 252 -- at 252? There we go. Perfect.

01:18:28 24 A. Right.

01:18:29 25 Q. (By Mr. Kohm) And where is the timer?

01:18:31 1 A. Yeah, in the -- the sort of darker blue bar, it tells  
01:18:35 2 you what your goals are for this particular mission. And  
01:18:38 3 you have to defeat all the enemies. And you have to do it  
01:18:41 4 within a time limit. In this case there's 26 minutes and  
01:18:44 5 50 seconds left in that mission.

01:18:49 6 Q. And all of the elements of Magic and BattleForge that  
01:18:52 7 you've discussed today, were those available and  
01:18:58 8 disclosed -- well, let me rephrase.

01:19:01 9 All of the elements of Magic and BattleForge that  
01:19:04 10 you discussed today, were those contained in a disclosure  
01:19:08 11 before March 2013?

01:19:10 12 A. Yes, all of those game features and behaviors were  
01:19:14 13 disclosed publicly before that date.

01:19:16 14 Q. What's your basis for saying that?

01:19:18 15 A. Well, I reviewed a lot of documents that predated that  
01:19:22 16 date in which those features were disclosed.

01:19:24 17 MR. KOHM: Mr. Smith, can you pull up DX-566 at 3?  
01:19:37 18 And that's up on the -- the right, I believe. Yes.

01:19:40 19 Q. (By Mr. Kohm) What there supports your position that  
01:19:44 20 Magic was available before 2013?

01:19:47 21 A. Right. So let's take these -- the first one on the  
01:19:50 22 left is an Internet Archive snapshot of a web page from  
01:20:00 23 2007.

01:20:00 24 So the Internet Archive is -- basically, it's a  
01:20:04 25 web service that takes pictures and snapshots of web pages

01:20:09 1 as they existed at a certain point in time. So you can go  
01:20:11 2 back to the past and look at what the web looked at --  
01:20:14 3 looked like back then.

01:20:16 4 So the URL that you can see, MobyGames.com, so on  
01:20:22 5 and so forth, that was the URL that on March 3rd, 2007,  
01:20:30 6 this page is what that looked like. So the archives took a  
01:20:34 7 snapshot of this page on that date and saved it.

01:20:38 8 So when I go and look at the archive for that date  
01:20:41 9 for March 3rd, this is what the -- I see what the page  
01:20:45 10 looked like back then.

01:20:47 11 And so what this tells me is that as -- as of that  
01:20:49 12 date, the mobile games website had a page for Magic: The  
01:20:54 13 Gathering, that it was published by Microsoft -- MicroProse  
01:20:59 14 software. So these are the things that this web page is  
01:21:00 15 telling me.

01:21:00 16 Q. And you're referring to DX-943?

01:21:03 17 A. Yes, I am.

01:21:03 18 Q. What about the top right, DX-566, is there anything  
01:21:08 19 there that you rely on?

01:21:09 20 A. Yes. So that's the -- the Magic manual, the manual for  
01:21:14 21 the game that we're talking about, and that's copyright  
01:21:17 22 1997.

01:21:18 23 Q. Do you have any reason to believe that that copyright  
01:21:21 24 date is incorrect?

01:21:22 25 A. No, I don't.

01:21:22 1 Q. What about BattleForge, what -- why do you believe it  
01:21:32 2 was available before March 2013?

01:21:34 3 A. For similar reasons. I looked on the Internet Archive  
01:21:38 4 for public references that were saved and snapshotted prior  
01:21:42 5 to that date.

01:21:43 6 MR. KOHM: Mr. Smith, can you pull up DX-949 and  
01:21:48 7 945?

01:21:49 8 Q. (By Mr. Kohm) Are these those screenshots -- or  
01:21:57 9 screenshots of those Wayback Machine archives?

01:22:00 10 A. These are snips of those archives, correct, yes.

01:22:04 11 Q. And what date does it indicate the web page was  
01:22:13 12 available?

01:22:14 13 A. In the upper right, it talks -- it says that the -- the  
01:22:18 14 URL, eagames.com/games/BattleForge was available publicly  
01:22:23 15 on March 25th, 2009.

01:22:25 16 MR. KOHM: Mr. Smith, can you pull up DX-957?

01:22:38 17 Q. (By Mr. Kohm) What is shown on the bottom of the  
01:22:40 18 screen?

01:22:40 19 A. On the bottom of the screen is the copyright notice  
01:22:42 20 from the BattleForge manual that I reviewed.

01:22:45 21 Q. All right.

01:22:46 22 A. And it's copyright 2009 by Electronic Arts.

01:22:58 23 MR. KOHM: And can we go to Slide 109, Mr. Smith?

01:23:09 24 109. It's the motivation to combine. Motivation to  
01:23:37 25 combine. There we go.

01:23:38 1 Q. (By Mr. Kohm) You mentioned motivation to combine  
01:23:41 2 earlier. Do you have an opinion whether a person of  
01:23:44 3 ordinary skill in the art would have been motivated to  
01:23:45 4 combine the publications related to Magic and BattleForge?  
01:23:48 5 A. Yeah, absolutely they would. For starters, Magic is a  
01:23:53 6 collectible card game. BattleForge is also a collectible  
01:23:57 7 card game. They're both computer game implementations of  
01:24:03 8 CCGs.

01:24:05 9 And BattleForge was very clear that it was  
01:24:06 10 intending to combine real-time strategy games, or RTS,  
01:24:11 11 features with the collectible card game features in games  
01:24:13 12 like Magic. So already, there's a motivation to combine  
01:24:18 13 because they're the same genre.

01:24:23 14 In fact, if you remember what the cards looked  
01:24:26 15 like from both games, they were functionally almost  
01:24:26 16 identical. You have the cost in the corner and the  
01:24:31 17 strength of the card down in the other corner, a big  
01:24:31 18 picture of the character in the middle, and underneath that  
01:24:34 19 is some text that describes what they do.

01:24:36 20 And that's -- that's a very common theme in  
01:24:39 21 this -- in this collectible card genre, as opposed to  
01:24:39 22 regular playing cards which nobody collects because  
01:24:45 23 they're -- you just have them already.

01:24:49 24 And they're both, in fact, card battle video  
01:24:52 25 games. The idea of a card battle game is one where you're

01:24:56 1 playing cards to resolve the central conflict of the game.  
01:25:00 2 You're trying to defeat the enemy. The enemy is trying to  
01:25:03 3 defeat you. And you're using cards to do that.

01:25:05 4 Both Magic and BattleForge use cards to carry out  
01:25:09 5 battles. And the -- both of those games have resource  
01:25:13 6 costs associated with the card, so they're both resource  
01:25:16 7 management games.

01:25:17 8 Magic is a turn based game, and BattleForge is a  
01:25:21 9 real-time game. And so the way the resources flow through  
01:25:23 10 the system is obviously a little different. In one case,  
01:25:27 11 it's based on turns. And -- and Magic uses this tapping  
01:25:30 12 idea.

01:25:31 13 But BattleForge, on the other hand, has a  
01:25:33 14 constantly flowing power growth, and actually that's the  
01:25:38 15 next point is that BattleForge has a timer. There's  
01:25:42 16 increasing power. I think it's every two seconds you get  
01:25:45 17 an extra chunk of -- of power from the various sources in  
01:25:49 18 BattleForge.

01:25:49 19 Whereas, in Magic, every turn, your  
01:25:56 20 previously-spent mana becomes available to you again, and  
01:25:59 21 you can generate more based on certain game actions.

01:26:02 22 Q. Turning to secondary considerations.

01:26:07 23 MR. KOHM: Mr. Smith, can you pull up Slide 113?

01:26:11 24 Q. (By Mr. Kohm) Could you please explain what secondary  
01:26:13 25 considerations are?

01:26:14 1 A. Yes. My understanding is that secondary considerations  
01:26:16 2 are related to whether a patent is not obvious. And, for  
01:26:22 3 example, even if you were to find all of the features in  
01:26:25 4 the patent in the prior art, a secondary consideration of  
01:26:31 5 non-obviousness would be that there was a lack of  
01:26:35 6 commercial success in the -- for those combinations. And  
01:26:38 7 then the patent came along, and all of a sudden it was  
01:26:42 8 making money again.

01:26:45 9 But there's a -- you know, the idea of industry  
01:26:48 10 praise. The combination was or was not, you know, widely  
01:26:54 11 lauded by -- by people in the industry.

01:26:56 12 So, in this particular case, the -- the patents  
01:26:59 13 that we're looking at, the '137 and '481 patents, there --  
01:27:04 14 there was no evidence of commercial success, to my  
01:27:07 15 knowledge. I've reviewed no evidence that there was praise  
01:27:11 16 in the industry for the combination of these features.

01:27:15 17 There's no evidence that -- that the patents  
01:27:18 18 themselves provided a solution to a long-felt need. There  
01:27:23 19 are no unexpected results because what you're really  
01:27:27 20 talking about is a method of drawing cards in a card game.

01:27:30 21 And there was no skepticism or teaching away --  
01:27:35 22 that is, the patent's combination didn't do something that  
01:27:39 23 was different from prior combinations and say this is  
01:27:42 24 different and this is why we're -- we're inventive.

01:27:49 25 Q. So what is your opinion with respect to Claim 1 of the



01:27:58 1 '137 patent?

01:27:58 2 A. Is that Claim 1 of the '137 patent is obvious over the  
01:28:04 3 prior art references that I've disclosed and discussed and  
01:28:08 4 also over the knowledge of one -- in combine -- in  
01:28:12 5 combination of the knowledge of one of ordinary skill in  
01:28:15 6 the art.

01:28:15 7 In short, all of the features claimed in that  
01:28:18 8 claim were well-known at the time of the invention.

01:28:20 9 Q. And do you believe that Magic and BattleForge  
01:28:33 10 anticipate that claim?

01:28:33 11 A. Yes, I do. I believe that Magic by itself anticipates  
01:28:39 12 all of the elements of Claim 1 of the '137 patent, and  
01:28:43 13 that -- so does BattleForge.

01:28:45 14 Q. What about Claim 2 of the '137 patent, what's your  
01:28:49 15 opinion?

01:28:49 16 A. That -- that Claim 2 of -- let me just turn to it,  
01:29:00 17 please. Claim 2 of the '137 patent is, first of all,  
01:29:05 18 rendered obvious by the combination of BattleForge and  
01:29:08 19 Magic, along with the knowledge of one of skill in the art.

01:29:12 20 And I believe that Magic certainly anticipates all  
01:29:15 21 of those extra features because it's visually showing the  
01:29:20 22 card being removed from the hand and another card being  
01:29:23 23 drawn into it.

01:29:25 24 And to the extent that BattleForge doesn't show  
01:29:29 25 the card going all the way out of the hand, it's taken out

01:29:32 1 of play. And so it would have been obvious to make that  
01:29:35 2 change from a swooping card to one actually going away in  
01:29:39 3 the first place. Drawing cards was not a new thing in  
01:29:42 4 2013.

01:29:42 5 Q. Now, what's your opinion regarding Claim 15 of the '137  
01:29:45 6 patent?

01:29:45 7 A. Claim 15 is the same analysis that I just gave with  
01:29:53 8 regard to Claim 2 because it is a method version of the  
01:29:59 9 server claim of Claim 2.

01:30:03 10 So all of -- all of what I just said with respect  
01:30:05 11 to Claim 2 also applies to Claim 15.

01:30:08 12 Q. And what is your opinion regarding Claim 4 of the '481  
01:30:15 13 patent?

01:30:15 14 A. Right. So we first have to take a look at Claim 1, I  
01:30:27 15 think. I know Claim 1 wasn't asserted. But in order to  
01:30:31 16 understand that, Claim 4 is a dependent claim. So you have  
01:30:34 17 to take a look at Claim 1 to see what all of the other  
01:30:38 18 elements are. But all of those elements in Claim 1 were --  
01:30:42 19 were met by Magic.

01:30:44 20 And -- and so is the element in Claim 4. And so,  
01:30:50 21 therefore, Magic anticipates Claim 4.

01:30:51 22 Q. What about BattleForge?

01:30:54 23 A. And BattleForge, let's see -- processing -- yeah, so  
01:31:01 24 BattleForge meets all of the claim elements. At a minimum,  
01:31:08 25 BattleForge renders obvious this claim element in view of

01:31:11 1 knowledge of one of ordinary skill because, like I said,  
01:31:14 2 the idea of drawing and replacing cards in a hand of cards  
01:31:19 3 is obvious.

01:31:20 4 Q. Do you have an opinion regarding Claim 4 with respect  
01:31:23 5 to BattleForge and Magic together?

01:31:25 6 A. Yes. Together, combined, Magic and BattleForge do  
01:31:30 7 disclose all of the elements of Claim 4. And it would have  
01:31:34 8 been obvious to do so from one of ordinary skill in the  
01:31:37 9 art.

01:31:37 10 Q. And what about Claim 5 of the '481 patent?

01:31:43 11 A. Right. Claim 5 is the one that talks about having a  
01:31:46 12 timer on the turn -- that is, the time limit. And just --  
01:31:51 13 again, by itself, a time limit is well-known.

01:31:54 14 So applying a time limit to the game of Claim 1  
01:31:57 15 would also have been obvious. And it -- in view of the  
01:32:00 16 combination of Magic and BattleForge, would also have been  
01:32:06 17 obvious to one of ordinary skill. And, in fact,  
01:32:09 18 BattleForge by itself anticipates that by directly showing  
01:32:13 19 a timer on some of its missions.

01:32:16 20 Q. Thank you.

01:32:16 21 MR. KOHM: You can take down this slide.

01:32:19 22 Q. (By Mr. Kohm) You reviewed code for Clash Royale  
01:32:23 23 regarding infringement in this case, correct?

01:32:25 24 A. Yes, I did.

01:32:26 25 Q. Did you form any opinions regarding any -- what are

01:32:31 1 referred to as non-infringing alternatives?

01:32:32 2 A. Yes, I did.

01:32:33 3 Q. And did you -- do you believe there are any so-called  
01:32:43 4 non-infringing alternatives?

01:32:43 5 A. Well -- so, I mean, first of all, I don't think the  
01:32:46 6 patents are infringed in the first place, but it's my  
01:32:49 7 understanding that in view of the required sequence of  
01:32:55 8 steps, selection and then subtraction and then addition,  
01:32:59 9 and in view of the flowchart that I showed earlier where we  
01:33:03 10 talked about how the process flowed during that game update  
01:33:06 11 loop where -- well, actually, I don't know if I should talk  
01:33:12 12 about all of that just yet.

01:33:15 13 Q. Can you keep it at a high level?

01:33:17 14 A. Okay. I'll keep it at a high level.

01:33:20 15 In view of that game update process where there  
01:33:22 16 was the card-playing process that did the subtraction of  
01:33:30 17 Elixir and then the creation of the spell on the screen and  
01:33:33 18 then after that the frequent fractional addition of Elixir,  
01:33:33 19 all you would have to do is swap those in order to  
01:33:40 20 demonstrate unequivocally or even further demonstrate, I  
01:33:44 21 should say, that addition happens before subtraction, and,  
01:33:47 22 therefore, the claims could not possibly be infringed.

01:33:49 23 Q. Are you able to estimate how much engineering time it  
01:33:52 24 would take to implement such an alternative?

01:33:54 25 A. Yes, I am, having looked at the code. I mean, the two

01:34:00 1 function calls that we're talking about are literally like  
01:34:02 2 15 or 20 lines apart from one another.

01:34:06 3 So I think I -- I looked -- I mean, actually doing  
01:34:08 4 the change would take half a minute. Then you have to test  
01:34:11 5 it and make sure that other things don't change down the  
01:34:14 6 road.

01:34:15 7 But having reviewed the functional flow of how all  
01:34:19 8 these messages pass through the system, I -- it wouldn't  
01:34:21 9 take longer than a few days to do the testing and then  
01:34:25 10 verify everything works.

01:34:27 11 Q. Thank you, Mr. Friedman.

01:34:29 12 MR. KOHM: I pass the witness.

01:34:30 13 THE COURT: Cross-examination by the Plaintiff?

01:34:34 14 MR. MOORE: Thank you, Your Honor.

01:35:09 15 May I proceed, Your Honor?

01:35:11 16 THE COURT: Well, your co-counsel is standing up  
01:35:13 17 in the middle of the courtroom.

01:35:14 18 MR. MOORE: Oh, I'm sorry. We have binders. May  
01:35:16 19 he pass them out, please?

01:35:18 20 THE COURT: He may pass them out.

01:35:20 21 MR. MOORE: Thank you.

01:35:32 22 THE WITNESS: Thank you.

01:35:34 23 THE COURT: All right. Mr. Moore, you may proceed  
01:35:37 24 when you're ready.

01:35:37 25 MR. MOORE: Thank you, Your Honor.

CROSS-EXAMINATION

01:35:37 1

01:35:38 2

BY MR. MOORE:

01:35:38 3

Q. Good afternoon, Mr. Friedman.

01:35:40 4

A. Good afternoon.

01:35:40 5

Q. Good to see you again.

01:35:42 6

A. Thank you.

01:35:43 7

Q. Now, you have significant experience in casino gaming,

01:35:49 8

correct?

01:35:49 9

A. I do.

01:35:50 10

Q. And casino gaming typically involves betting real

01:35:54 11

money, right?

01:35:54 12

A. Yes.

01:35:54 13

Q. Okay. And, in fact, you mentioned that -- your

01:35:57 14

company, Olympian Gaming on direct; do you recall that?

01:35:59 15

A. I do.

01:36:00 16

Q. And that company was started as an independent casino

01:36:04 17

game design and analysis consultancy; isn't that right?

01:36:08 18

A. That's right.

01:36:08 19

Q. You also mentioned that you're the inventor on around

01:36:12 20

40 patents?

01:36:13 21

A. Yes.

01:36:13 22

Q. And you recall you listed a few of those patents in

01:36:16 23

your expert report?

01:36:17 24

A. I do.

01:36:17 25

Q. And one of them that you listed had the title of Bad

01:36:22 1 Beat Blackjack; is that correct?

01:36:24 2 A. That's correct.

01:36:25 3 Q. Another one was titled Poker Game With Variable Payouts

01:36:29 4 Based on Probabilities of Winning, correct?

01:36:30 5 A. Yes.

01:36:30 6 Q. And then the third one was called Acey-Deucey with a

01:36:35 7 discolored draw option, correct?

01:36:35 8 A. That wasn't the name of the patent. That was a

01:36:38 9 description, but, yes.

01:36:39 10 Q. Okay. That was the description. Thank you.

01:36:41 11 Now, you're -- you're not a professor, correct?

01:36:43 12 A. I am not a professor.

01:36:44 13 Q. And you're not a Ph.D.?

01:36:46 14 A. That's correct.

01:36:46 15 Q. And would you agree that Clash Royale is a mobile

01:36:51 16 online game in which multiple players have characters that

01:36:56 17 fight each other?

01:36:59 18 A. Yes.

01:37:00 19 Q. But you never worked on a -- as a developer on that

01:37:03 20 type of game, correct?

01:37:07 21 A. Not on that type of game, no.

01:37:14 22 Q. All right. And you've been working on this case on

01:37:16 23 behalf of Supercell for a little under a year; is that

01:37:19 24 right?

01:37:19 25 A. That sounds right.

01:37:20 1 Q. And when we took your deposition in June of this year,  
01:37:23 2 I think you said that you had already invoiced Supercell  
01:37:28 3 more than a \$100,000.00 for your work; is that right?

01:37:30 4 A. I -- I believe that's right, yes.

01:37:32 5 Q. And you've done work since -- from June until right  
01:37:35 6 here today?

01:37:35 7 A. Oh, yes.

01:37:36 8 Q. And so what's the total now that you've invoiced to  
01:37:40 9 Supercell for your work?

01:37:41 10 A. I don't recall the number.

01:37:43 11 Q. Would it be more than 200,000?

01:37:45 12 A. Likely, yeah.

01:37:47 13 Q. All right. Now, let -- you talked about invalidity,  
01:37:56 14 and it's your opinion that each of the two battle patents  
01:37:59 15 is invalid, correct?

01:38:00 16 A. That's right.

01:38:01 17 Q. Now, you understand that Supercell must convince the  
01:38:05 18 jury of its defense of invalidity by clear and convincing  
01:38:07 19 evidence, right?

01:38:11 20 A. I do.

01:38:11 21 Q. And, in fact, would you agree that to do that,  
01:38:14 22 Supercell and you must show that the prior art discloses  
01:38:19 23 each and every element of the claims of the patents that  
01:38:24 24 are at issue here in this lawsuit by clear and convincing  
01:38:27 25 evidence, right?



01:38:30 1 A. Yes, I understand that.

01:38:31 2 Q. Not merely by the lower standard of preponderance of  
01:38:34 3 the evidence, correct?

01:38:35 4 A. Okay.

01:38:35 5 Q. Do you understand that?

01:38:37 6 A. Yes.

01:38:37 7 Q. And is that the evidence -- is that the burden that you  
01:38:40 8 applied in the work that you did?

01:38:42 9 A. I'm not sure how to answer that question.

01:38:47 10 Q. That's fine. I'll -- I'll withdraw it.

01:38:50 11 Now, you first argue -- you argue -- or you've  
01:38:54 12 presented here -- testified about two different types of  
01:38:57 13 invalidity defenses; is that correct?

01:39:00 14 A. Yes.

01:39:00 15 Q. One is called anticipation; is that right?

01:39:04 16 A. Yes.

01:39:06 17 Q. Okay. And the other is called obviousness, right?

01:39:10 18 A. That's right.

01:39:10 19 Q. And you understand that among the different defenses  
01:39:13 20 Supercell is presenting in this lawsuit, that it is arguing  
01:39:18 21 both anticipation and obviousness?

01:39:21 22 A. Yes, I do understand that.

01:39:23 23 Q. Okay. Now -- talking about anticipation first, to  
01:39:28 24 prove its defense of anticipation, Supercell must convince  
01:39:36 25 the jury that there is a single prior art reference that

01:39:41 1 discloses each and every single element of the claims of  
01:39:46 2 the patents at issue, correct?

01:39:48 3 A. That's right.

01:39:48 4 Q. And even if a single element is missing from that prior  
01:39:52 5 art reference, there is no anticipation, correct?

01:39:54 6 A. That's my understanding, yes.

01:39:56 7 Q. All right. Now, you have offered opinions on two  
01:40:02 8 different references -- two different prior art references,  
01:40:04 9 correct?

01:40:04 10 A. I think I would characterize it as a collection of  
01:40:10 11 documents relating to two different games.

01:40:12 12 Q. Two different games. Thank you.

01:40:14 13 You've testified on direct, on your anticipation  
01:40:20 14 testimony, you've talked about BattleForge and Magic,  
01:40:23 15 correct?

01:40:23 16 A. That's correct.

01:40:24 17 Q. But for anticipation, it's not enough to show that all  
01:40:30 18 of the elements of the claim are found among both of those  
01:40:33 19 references together, correct? Both of those games  
01:40:37 20 together; isn't that right?

01:40:40 21 A. That's right.

01:40:40 22 Q. In fact, you would have to show that each of the games  
01:40:47 23 on its own has all of the elements of the claims, correct?

01:40:50 24 A. I would have to show that a single reference discloses  
01:40:53 25 all of the claim elements, correct?

01:40:55 1 Q. And you would have to do that, or at least Supercell  
01:40:58 2 would have to meet that burden by clear and convincing  
01:41:00 3 evidence, correct?

01:41:00 4 A. Yes, that's correct.

01:41:08 5 Q. All right. Now, BattleForge, that was not published by  
01:41:11 6 GREE, correct?

01:41:12 7 A. No, it was not.

01:41:13 8 Q. It was published by Electronic Arts, or EA for short;  
01:41:17 9 is that right?

01:41:17 10 A. That's right.

01:41:17 11 Q. And you testified about BattleForge and how that game  
01:41:20 12 worked, right?

01:41:21 13 A. I did.

01:41:22 14 Q. But you've never actually played BattleForge, have you?

01:41:25 15 A. I have not.

01:41:25 16 Q. In fact, you first learned about the existence of the  
01:41:28 17 game BattleForge from Supercell's attorneys, right?

01:41:30 18 A. That's right.

01:41:35 19 Q. And now when you talked about Clash Royale and whether  
01:41:38 20 it infringed the battle patents, you primarily relied on  
01:41:42 21 source code from Clash Royale to try to argue that it  
01:41:44 22 didn't infringe, right?

01:41:45 23 A. No, that's not accurate. I relied on my analysis of  
01:41:49 24 the game itself and the source code.

01:41:49 25 Q. Okay. Fine. You relied on source code -- in fact, you

01:41:53 1 showed the jury source code from Clash Royale when you were  
01:41:57 2 testifying about whether it infringes the GREE patents,  
01:42:00 3 right?

01:42:00 4 A. That's correct.

01:42:01 5 Q. But you didn't show the jury any source code from  
01:42:06 6 BattleForge, did you?

01:42:06 7 A. That would have been impossible.

01:42:10 8 MR. MOORE: Objection, nonresponsive. Motion to  
01:42:12 9 strike, Your Honor.

01:42:18 10 THE COURT: Sustained.

01:42:19 11 You need to answer the question, Mr. Friedman. If  
01:42:23 12 you didn't show them, you didn't show them. If you did,  
01:42:26 13 you did.

01:42:27 14 A. That's -- you're correct.

01:42:30 15 Q. (By Mr. Moore) Okay. In fact, you've never seen any  
01:42:33 16 source code for BattleForge, have you?

01:42:34 17 A. That's correct.

01:42:35 18 Q. So to try to show the jury -- or strike that.

01:42:39 19 To testify before the jury about Clash Royale,  
01:42:44 20 you -- strike that. I'll withdraw and move on.

01:42:46 21 Now, you talked about -- in your testimony on  
01:42:52 22 BattleForge, you talked about a manual for BattleForge. Do  
01:42:57 23 you recall that?

01:42:57 24 A. Yes, I do.

01:42:59 25 Q. And you pointed to different parts about the manual

01:43:01 1 during your testimony, right?

01:43:03 2 A. Yes.

01:43:03 3 Q. Now, you received that manual for BattleForge for --  
01:43:07 4 from counsel for Supercell, correct?

01:43:09 5 A. Correct.

01:43:09 6 Q. And you also showed screenshots from a video of  
01:43:14 7 BattleForge on your direct examination?

01:43:15 8 A. That's correct.

01:43:15 9 Q. Now, you didn't actually play the video for the jury,  
01:43:21 10 right?

01:43:21 11 A. You mean run it on -- no, I did not.

01:43:25 12 Q. All right. Now, you also got that video -- or strike  
01:43:28 13 that.

01:43:29 14 You learned about that video through the attorneys  
01:43:31 15 for Supercell, correct?

01:43:32 16 A. Yes.

01:43:32 17 Q. And you first got it after you were hired -- hired as  
01:43:35 18 an expert in this case, right?

01:43:38 19 A. Yes.

01:43:46 20 Q. Okay.

01:43:47 21 MR. MOORE: Mr. Groat, could you please pull up  
01:43:50 22 Mr. Friedman's Slide 20 from -- I believe it's the 3B deck?

01:43:56 23 Q. (By Mr. Moore) Okay. Now, I believe on direct  
01:44:06 24 examination, you discussed this claim element with respect  
01:44:10 25 to BattleForge; is that right?

01:44:15 1 A. Yes, that's correct.

01:44:16 2 Q. And this is the claim element of the battle patents --  
01:44:20 3 of GREE's battle patents that requires a sequence, right?

01:44:24 4 A. Yes.

01:44:24 5 Q. It requires a sequence of selecting and then  
01:44:29 6 subtracting and then adding; is that right?

01:44:34 7 A. That's right.

01:44:35 8 Q. Okay.

01:44:35 9 MR. MOORE: You may take that down, please.

01:44:38 10 Now, Mr. Groat, would you please pull up  
01:44:42 11 Mr. Friedman's opening expert report at Paragraph 368,  
01:44:46 12 which is on Page 186?

01:44:51 13 Q. (By Mr. Moore) And you wrote an expert report in -- in  
01:44:57 14 this case? Actually I think you wrote two; is that right?

01:45:03 15 A. That's right.

01:45:04 16 MR. MOORE: You can take that down, Mr. Groat.

01:45:05 17 Q. (By Mr. Moore) And you discussed BattleForge in at  
01:45:08 18 least one of those reports; is that right?

01:45:09 19 A. Yes, that's right.

01:45:10 20 Q. And the expert report was to be a statement by you of  
01:45:12 21 the opinions that you might offer in the trial of this  
01:45:17 22 case; is that right?

01:45:17 23 A. Yes.

01:45:18 24 Q. You have in your binder a copy of the reports should  
01:45:22 25 you need to consult them, but I'm showing you one of the

01:45:25 1 pages from your report.

01:45:26 2 Do you recognize this as Paragraph 368 from your  
01:45:29 3 opening expert report?

01:45:31 4 A. Yeah, that looks like what I wrote, yes.

01:45:33 5 Q. And on the bottom of the screen there, there's an image  
01:45:35 6 from the game BattleForge, right?

01:45:41 7 A. Yes.

01:45:41 8 MR. MOORE: All right. Now, could you blow up the  
01:45:43 9 paragraph there now, please, Mr. Groat?

01:45:46 10 Q. (By Mr. Moore) All right. So about five lines down at  
01:45:51 11 the end of the line, do you see the sentence that says "in  
01:45:54 12 the example"?

01:45:57 13 A. Yes.

01:45:57 14 Q. And that -- there you say -- first, you say: In the  
01:46:03 15 example shown below, the player initially has 91 power  
01:46:07 16 shown on its power meter when selecting the Master Archers,  
01:46:13 17 and then a reference to BFframe1. Do you see that?

01:46:19 18 A. Yes, I do.

01:46:19 19 MR. MOORE: If you could take that down and blow  
01:46:22 20 up the image below that, along with the text underneath it,  
01:46:26 21 please. That's fine.

01:46:27 22 Q. (By Mr. Moore) This is the image BFframe1, correct?

01:46:31 23 A. Yes.

01:46:32 24 Q. And what you're referring to there as 91 is in the very  
01:46:35 25 top right corner --

01:46:36 1 MR. MOORE: I don't know if you can blow that up  
01:46:38 2 anymore, please, Mr. Groat.

01:46:40 3 Q. (By Mr. Moore) You're referring to the number 91 right  
01:46:43 4 there in the upper right corner, correct?

01:46:44 5 A. That's right.

01:46:45 6 MR. MOORE: All right. Could we go back to the  
01:46:47 7 paragraph, please? And blow up the paragraph again.

01:46:54 8 Q. (By Mr. Moore) Okay. So the sentence continues in  
01:46:56 9 your report: Followed by placement of the Master Archers  
01:47:01 10 in the battlefield with an increase in power of + 4 to 95  
01:47:07 11 available power. And then you refer to BFframe2.

01:47:11 12 And you wrote that in your report?

01:47:13 13 A. I did.

01:47:14 14 MR. MOORE: All right. Could we go to the next  
01:47:16 15 page, please? And please blow up the top image along with  
01:47:20 16 the text underneath.

01:47:22 17 Q. (By Mr. Moore) And this is BFframe2 as you refer to in  
01:47:27 18 your report?

01:47:27 19 A. It is.

01:47:27 20 Q. And the 95 that we're talking about, again, is in the  
01:47:30 21 upper right-hand corner, correct?

01:47:33 22 A. That's right.

01:47:36 23 Q. All right.

01:47:36 24 MR. MOORE: Let's go back to the prior page and  
01:47:38 25 blow up the paragraph.



01:47:39 1 Q. (By Mr. Moore) And then you continue with that  
01:47:41 2 sentence by saying: And subtraction of the 50 power cost  
01:47:46 3 for Master Archers from 95 available power as the Master  
01:47:51 4 Archers are deployed into the battlefield, and you refer to  
01:47:56 5 BFframe3, correct?  
01:48:00 6 A. That's correct.  
01:48:01 7 MR. MOORE: Now, let's go to the next page, again,  
01:48:04 8 and please pull up BFframe3 at the bottom of the page.  
01:48:09 9 Q. (By Mr. Moore) And this is the BFframe3; is that  
01:48:11 10 correct?  
01:48:11 11 A. Yes, it is.  
01:48:14 12 Q. All right. And up in the upper right-hand corner it  
01:48:17 13 says 45, right?  
01:48:19 14 A. Right.  
01:48:20 15 Q. And that's what happens when the 50 power cost for the  
01:48:24 16 Master Archers is subtracted from the 95 available power is  
01:48:28 17 you get that 45, right?  
01:48:30 18 A. Exactly.  
01:48:31 19 MR. MOORE: Thank you. You may take that down.  
01:48:35 20 Q. (By Mr. Moore) Now, you also talked about the Magic  
01:48:37 21 game, correct?  
01:48:38 22 A. I did.  
01:48:39 23 Q. And, again, that's not a game that GREE published,  
01:48:43 24 right?  
01:48:43 25 A. That's right.

01:48:44 1 Q. Who published Magic?

01:48:47 2 A. The game I reviewed was published by MicroProse.

01:48:52 3 Q. And there -- you said the game that you reviewed.

01:48:52 4 That's because there was a number of Magic games that have  
01:48:52 5 been published over the years?

01:48:53 6 A. That's correct, there have been many PC games based on  
01:48:57 7 the card game Magic.

01:48:58 8 Q. And the one that you relied on for your invalidity  
01:49:01 9 opinions in this case is a game called Magic: The Gathering  
01:49:07 10 that was published in 1997; is that right?

01:49:09 11 A. That's correct.

01:49:11 12 Q. Okay. But you have never played the 1997 Magic PC  
01:49:17 13 game, have you?

01:49:17 14 A. I have not.

01:49:18 15 Q. In fact, you don't -- you didn't recall at your  
01:49:20 16 deposition whether you were even aware of that game before  
01:49:23 17 you were hired for this case; is that right?

01:49:25 18 A. That's right.

01:49:26 19 Q. And you didn't show the jury any source code from the  
01:49:31 20 1997 Magic PC game on your direct testimony, did you?

01:49:34 21 A. I did not.

01:49:35 22 Q. In fact, you've never seen the source code from the  
01:49:38 23 1997 Magic PC game; is that correct?

01:49:40 24 A. That's correct.

01:49:40 25 Q. Now, you did show a manual from that game; is that

01:49:43 1 right?

01:49:43 2 A. Yes, yes, I --

01:49:44 3 Q. And you got that manual for -- from the attorneys for  
01:49:48 4 Supercell; is that right?

01:49:49 5 A. That's right.

01:49:50 6 Q. Now, the second invalidity defense that you offered  
01:50:01 7 testimony about was this defense of obviousness; is that  
01:50:04 8 correct?

01:50:04 9 A. That's correct.

01:50:04 10 Q. And what obviousness is, is that if you have two or  
01:50:09 11 more different prior art games or other references, you can  
01:50:12 12 combine them together to try to make the invention, right?

01:50:16 13 A. I don't know about trying to make the invention, but I  
01:50:22 14 think the test for obviousness is whether all of the claim  
01:50:24 15 elements are disclosed by a combination of references in  
01:50:28 16 combination with the knowledge of one of ordinary skill.

01:50:30 17 Q. Right. But that combination must disclose all of the  
01:50:35 18 claim elements, right?

01:50:36 19 A. That's correct.

01:50:37 20 Q. If even a single claim element is not disclosed by that  
01:50:41 21 combination, then there can be no obviousness, correct?

01:50:44 22 A. That's right.

01:50:45 23 Q. Okay. And to -- for you to testify and persuade the  
01:50:54 24 jury of obviousness, you can't use hindsight, correct?

01:50:57 25 A. Yes, that's correct.

01:50:58 1 Q. In other words, you don't look at what's known right  
01:51:01 2 now and say, well, 10 years -- you know, looking back 10  
01:51:03 3 years ago, that seems obviousness now? That's not the  
01:51:06 4 right test, is it?

01:51:07 5 A. No. The test for obviousness is in view of the person  
01:51:10 6 of ordinary skill in the art at the time of the invention.

01:51:12 7 Q. And so -- in other words, you must cast your mind back  
01:51:16 8 to the time of the invention and think about what was known  
01:51:19 9 then?

01:51:19 10 A. Correct.

01:51:20 11 Q. And the time of the invention for the GREE '137 and  
01:51:25 12 '481 battle patents is 2013; is that correct?

01:51:28 13 A. That's right.

01:51:28 14 Q. Now, your argument -- or, I'm sorry, not your  
01:51:34 15 arguments. Your testimony on obviousness related to the  
01:51:37 16 combination of BattleForge and Magic, correct?

01:51:41 17 A. I did testify on that, yes.

01:51:44 18 Q. All right. And those are the same two games that you  
01:51:47 19 looked at for the anticipation testimony, correct?

01:51:49 20 A. Yes.

01:51:51 21 Q. In other words, what you say is that if you take what  
01:51:55 22 Magic had and what BattleForge had and you combine them,  
01:51:59 23 then you end up with something that has all of the elements  
01:52:03 24 of the claims of the GREE patents, correct?

01:52:06 25 A. When you add in the knowledge of one of ordinary skill,

01:52:10 1 that's true.

01:52:11 2 Q. Right. In light of what people of ordinary skill  
01:52:14 3 thought in 2013, correct?

01:52:15 4 A. Correct.

01:52:16 5 Q. All right. Now, Magic came out in 1997, correct?

01:52:20 6 A. Yes.

01:52:21 7 Q. And BattleForge came out in 2009, right?

01:52:26 8 A. Yes.

01:52:26 9 Q. Now, you didn't present any evidence here that between  
01:52:30 10 1997 and 2009 anybody came out with a game that combined  
01:52:36 11 the features of Magic and BattleForge, correct?

01:52:43 12 A. Well, I mean, I -- I discussed BattleForge is itself a  
01:52:47 13 combination of real-time strategy games and that card --  
01:52:53 14 collectible card game genre which Magic launched, but I  
01:53:01 15 mean, other than that, I don't know that I did.

01:53:03 16 Q. You didn't point to a real game that existed where you  
01:53:04 17 said, look, it's got all the features of both Magic and  
01:53:07 18 BattleForge, right?

01:53:07 19 A. No, I did not.

01:53:08 20 Q. Okay. And -- you didn't point to any real game that  
01:53:14 21 existed after 2009 and before 2013 that had all of the  
01:53:18 22 features of the combination of the Magic game and the  
01:53:21 23 BattleForge game, did you?

01:53:22 24 A. No, I did not.

01:53:28 25 Q. All right. And you've been here throughout various

01:53:30 1 points of this trial; is that right?

01:53:31 2 A. Yes, that's right.

01:53:31 3 Q. Have you heard the testimony that between the 2009 and  
01:53:35 4 2013 time frame, these mobile social games were becoming  
01:53:38 5 very popular?

01:53:38 6 A. I did hear that.

01:53:40 7 Q. All right. Okay. Now, on the issue of infringement,  
01:53:58 8 Mr. Friedman, you didn't -- the analysis that you did on  
01:54:00 9 infringement looked at whether every element of the claims  
01:54:03 10 of the '137 and '481 patents were present in Clash Royale,  
01:54:09 11 correct?

01:54:09 12 A. Yes, I looked at that.

01:54:11 13 Q. And that's the proper analysis to do for infringement,  
01:54:14 14 right?

01:54:14 15 A. So for infringement, all you have to do is identify one  
01:54:19 16 element of the claim that's not met by the accused device,  
01:54:23 17 and it doesn't infringe.

01:54:24 18 Q. Right. So the question of infringement is, does it  
01:54:26 19 have the elements, or doesn't it have -- doesn't it have  
01:54:29 20 the elements, right?

01:54:30 21 A. That's correct.

01:54:31 22 Q. Okay. Now, you didn't present any testimony that there  
01:54:35 23 can't be any infringement because GREE doesn't use its own  
01:54:39 24 patents here in the United States, did you?

01:54:41 25 A. No, I did not.

01:54:42 1 Q. That's not a defense to patent infringement, right?

01:54:44 2 A. I -- I don't believe so.

01:54:47 3 Q. Instead, the question on infringement is whether

01:54:50 4 Supercell uses the inventions in GREE's patents in the

01:54:54 5 United States, correct?

01:54:55 6 A. Yeah, I think it's make, use, sell, or offer to sell,

01:55:00 7 yes.

01:55:00 8 Q. Right. But by Supercell, not by GREE, right, for

01:55:04 9 infringement?

01:55:05 10 A. Right.

01:55:05 11 Q. Okay. Now, you didn't present any arguments that there

01:55:08 12 can't be any infringement here because Supercell makes more

01:55:11 13 money on its games in the United States than GREE does, did

01:55:14 14 you?

01:55:14 15 A. I did not.

01:55:15 16 Q. And that's not a defense to patent infringement either,

01:55:18 17 right?

01:55:18 18 A. Not to my knowledge.

01:55:19 19 Q. Okay. You also didn't argue that there can't be an

01:55:22 20 infringement here because GREE's from Japan, right?

01:55:25 21 A. I did not say that, no.

01:55:26 22 Q. I understand.

01:55:27 23 A. No.

01:55:28 24 Q. Because wherever a party comes from is not relevant to

01:55:32 25 the question of patent infringement; is that right?

01:55:34 1 A. Not to my knowledge.

01:55:35 2 Q. As long as a company owns a United States patent and  
01:55:37 3 the company can prove that a Defendant infringes it, then  
01:55:43 4 there should be patent infringement, right?

01:55:44 5 A. That's my understanding, yes.

01:55:46 6 Q. Okay. Now, in your testimony on infringement, you  
01:55:56 7 address, I believe, two claim elements that are present in  
01:56:01 8 the '137 and '481 battle patents; is that right?

01:56:07 9 A. I think that's right. I mean, I addressed a couple of  
01:56:12 10 features.

01:56:12 11 Q. Right. But your opinion was that there are two claim  
01:56:15 12 elements that you would argue are not present in Clash  
01:56:18 13 Royale, correct?

01:56:18 14 A. My opinion is that those two elements are missing.

01:56:22 15 Q. Okay.

01:56:22 16 MR. MOORE: Could we please pull up Slide 2 from  
01:56:25 17 the cross slides, Mr. Groat?

01:56:28 18 Q. (By Mr. Moore) All right. You see here this is '137  
01:56:37 19 patent, Claim 1?

01:56:38 20 A. Yes.

01:56:39 21 Q. All right. And the two claim elements about which you  
01:56:43 22 testified are the ones that are labeled h and i; is that  
01:56:49 23 correct?

01:56:49 24 A. I think that was the -- the labeling, yes.

01:56:53 25 Q. All right. So those are the two that you have



01:56:55 1 testified here are not met or are not present in Clash

01:56:58 2 Royale, right?

01:56:59 3 A. That's right.

01:57:00 4 Q. But you didn't offer any testimony disputing that Claim

01:57:06 5 Elements a through g are present in Clash Royale; is that

01:57:09 6 right?

01:57:09 7 A. Not here in trial, no.

01:57:10 8 Q. So you didn't get up and say, well, a is not there, b

01:57:14 9 is not there, et cetera; you only focused on h and i,

01:57:18 10 correct?

01:57:18 11 A. That's what I focused on, correct.

01:57:21 12 MR. MOORE: All right. Okay. Take that down,

01:57:24 13 please.

01:57:24 14 Q. (By Mr. Moore) Now, you showed the jury some source

01:57:29 15 code from Clash Royale, correct?

01:57:30 16 A. I did.

01:57:32 17 Q. And in Clash Royale, there's both source code that runs

01:57:37 18 on the servers and then source code that runs on the client

01:57:41 19 device, such as the user's phone; is that right?

01:57:45 20 A. That's correct.

01:57:45 21 Q. And now, the -- the server source code is written in a

01:57:48 22 language called Java?

01:57:49 23 A. Yes.

01:57:50 24 Q. And it will have an extension on it? Go ahead.

01:57:54 25 A. File extension, dot, dot --

01:57:55 1 Q. I was going to let you pour your water. That's fine.

01:58:01 2 THE COURT: Let's be sure we talk one at a time,  
01:58:04 3 gentlemen.

01:58:04 4 MR. MOORE: Thank you, Your Honor.

01:58:05 5 THE COURT: Let's continue.

01:58:05 6 MR. MOORE: Okay.

01:58:06 7 Q. (By Mr. Moore) The server code in Clash Royale written  
01:58:08 8 in the Java language has a file extension of .Java,  
01:58:12 9 correct?

01:58:12 10 A. Yes, typically.

01:58:14 11 Q. And the client-side source code for Clash Royale is  
01:58:16 12 written in a language known as C++, correct?

01:58:20 13 A. That's correct.

01:58:21 14 Q. And the file extension for that code is .cpp; is that  
01:58:26 15 correct?

01:58:26 16 A. And .h, but, yes, correct.

01:58:30 17 Q. Okay. But in your direct testimony, you only showed  
01:58:33 18 the jury source code files with the .cpp extension, right?

01:58:40 19 A. That's correct.

01:58:41 20 Q. And so you only showed the jury client-side source code  
01:58:44 21 in your direct testimony, correct?

01:58:46 22 A. Right.

01:58:46 23 Q. And you didn't show them any server-based source code,  
01:58:51 24 correct?

01:58:51 25 A. I did not.

01:58:51 1 Q. Okay.

01:59:07 2 MR. MOORE: Could you please pull up, Mr. Groat,  
01:59:11 3 Mr. Friedman's rebuttal report, at Page 30, Paragraph 51?

01:59:32 4 Q. (By Mr. Moore) All right. Now, in your rebuttal  
01:59:34 5 report at Paragraph 51, towards the end of the paragraph,  
01:59:39 6 do you see the sentence that begins: As shown in the video  
01:59:42 7 and described below?

01:59:43 8 A. Yes, I see that.

01:59:44 9 Q. And there you write: As shown in the video and  
01:59:48 10 described below, selection of a card in Clash Royale is not  
01:59:52 11 complete until the player both chooses a card from the  
01:59:56 12 player's hand and then chooses where within the battlefield  
02:00:00 13 the card will be played.

02:00:03 14 Is that correct?

02:00:03 15 A. That's correct.

02:00:06 16 MR. MOORE: Could you please go to Mr. Friedman's  
02:00:09 17 opening report, Page 386, at Paragraph 1087, and please --  
02:00:21 18 I'm sorry, 1057. Please blow that up.

02:00:23 19 Q. (By Mr. Moore) Now, in this paragraph, you were  
02:00:30 20 discussing when the players may begin to play their cards;  
02:00:34 21 is that correct?

02:00:34 22 A. Yes, that's correct.

02:00:35 23 Q. And in the second sentence of the paragraph, you talk  
02:00:39 24 about there being two manners in which a player may select  
02:00:44 25 a card for play, correct?

02:00:47 1 A. Yes, that's right.

02:00:48 2 Q. One is they can tap on the card and then tap on the  
02:00:53 3 battlefield, correct?

02:00:55 4 A. Yes.

02:00:55 5 Q. And then the second way they can do it is they can drag  
02:00:59 6 their finger from the card to a location on the battlefield  
02:01:03 7 and then release, correct?

02:01:05 8 A. That's correct.

02:01:05 9 Q. And then in the next sentence you say: Once either  
02:01:08 10 method is used, the selected card is erased from the hand,  
02:01:12 11 the Elixir cost of the card is subtracted from the Elixir  
02:01:15 12 meter, and the troop represented by the card appears at the  
02:01:20 13 desired location in a transparent, inactive state.

02:01:25 14 Is that correct?

02:01:25 15 A. That's correct.

02:01:25 16 Q. Okay. --

02:01:28 17 MR. MOORE: Could we -- you can take that down?

02:01:31 18 Can we please go to Paragraph 1059, and blow that  
02:01:35 19 one up?

02:01:36 20 Q. (By Mr. Moore) Now, you understand that -- you talked  
02:01:38 21 about Elixir on your direct testimony?

02:01:41 22 A. Yes, that's right.

02:01:42 23 Q. And this is the bar at the bottom that goes up and down  
02:01:44 24 over the course of the game?

02:01:45 25 A. That's what's shown on the screen, yes.

02:01:47 1 Q. On the screen, yes. Thank you.

02:01:48 2 Now, there's a maximum amount of Elixir that a  
02:01:55 3 player can ever get in Clash Royale; is that right?

02:01:57 4 A. At any one time, yes.

02:01:59 5 Q. At any one time. No matter how good they are, they can  
02:02:03 6 never get more than 10 Elixir, right?

02:02:05 7 A. Yes, the Elixir meter can only hold 10 Elixir.

02:02:09 8 Q. Okay. And it's full at that point?

02:02:12 9 A. Right.

02:02:12 10 Q. Right. And so if a player has 10 Elixir and then they  
02:02:21 11 select a card, there will be subtraction of the amount of  
02:02:27 12 that Elixir from the Elixir meter, correct?

02:02:29 13 A. That's what the screen would show, yes.

02:02:34 14 Q. Right. And that's how the game works, right?

02:02:36 15 A. Well, so the source code shows something a little bit  
02:02:39 16 different.

02:02:39 17 Q. Okay. Now, if you have 10 Elixir, for example, and you  
02:02:43 18 play a card that costs 5, your Elixir meter will go down  
02:02:47 19 from 10 to 5, correct?

02:02:48 20 A. That's what would be shown on the screen, yes.

02:02:50 21 Q. Okay. All right.

02:02:54 22 MR. MOORE: Let me go to, please, Mr. Friedman's  
02:03:02 23 Demonstratives 3A.

02:03:05 24 And, Your Honor, I'd like to show Mr. Friedman the  
02:03:08 25 Slide No. 3, but I don't know if that's one for which

02:03:11 1 Supercell's counsel would want to seal the courtroom.

02:03:13 2 THE COURT: Take a moment and check with  
02:03:15 3 Supercell's counsel.

02:03:16 4 MR. MOORE: Thank you.

02:03:22 5 Your Honor, I'm advised that they would like to  
02:03:25 6 seal the courtroom for this portion.

02:03:26 7 THE COURT: All right. Then to protect that  
02:03:28 8 confidential information and based on counsel's  
02:03:31 9 representation, I'll order the courtroom sealed.

02:03:33 10 Anyone present not subject to the protective order  
02:03:35 11 that's been entered in this case should excuse themselves  
02:03:38 12 and remain outside until the courtroom is reopened and  
02:03:41 13 unsealed.

02:03:47 14 (Courtroom sealed.)

02:03:47 15 (This portion of the transcript is sealed and  
02:03:47 16 filed under separate cover as  
02:03:49 17 Sealed Portion No. 4.)

02:11:37 18 (Courtroom unsealed.)

02:11:38 19 THE COURT: All right. Counsel, proceed with your  
02:12:02 20 redirect examination.

02:12:03 21 MR. KOHM: Thank you, Your Honor.

02:12:03 22 REDIRECT EXAMINATION

02:12:04 23 BY MR. KOHM:

02:12:04 24 Q. Mr. Friedman, GREE's counsel asked you about whether --  
02:12:08 25 regarding mobile social games; do you recall that?

02:12:11 1 A. I do, yes.

02:12:12 2 Q. Is there any requirement in the '137 or '481 patents  
02:12:17 3 that limit those patents to mobile social games?

02:12:21 4 A. No.

02:12:22 5 Q. Would it be possible to create a game that implemented  
02:12:26 6 the claims of the '137 and '481 patent without being a  
02:12:33 7 mobile social game?

02:12:33 8 A. Yes.

02:12:39 9 Q. GREE's counsel asked you -- or whether you reviewed the  
02:12:46 10 source code for BattleForge and Magic. Do you recall that?

02:12:49 11 A. I do.

02:12:49 12 Q. Why didn't you review the source code for BattleForge  
02:12:52 13 and Magic?

02:12:53 14 A. Couple of reasons. First of all, source code is  
02:12:56 15 generally confidential, and game companies don't release  
02:13:00 16 it. The only exception would be -- the usual exception  
02:13:03 17 would be if it were an open source game, one that the  
02:13:06 18 source code is published.

02:13:08 19 But Electronic Arts especially, when they released  
02:13:11 20 BattleForge, they wouldn't have published the source code.

02:13:14 21 But more to the point, these games are 10, maybe  
02:13:18 22 20-plus years old, so the source code was not available.

02:13:24 23 But really more to the point, I didn't need to  
02:13:26 24 rely on the source code for the behavior of the game  
02:13:29 25 because I wasn't attempting to identify the claim

02:13:32 1 limitations by pointing at particular lines of source code.  
02:13:36 2 I was trying to identify the claim limitations which are  
02:13:39 3 method steps, drawing a card, playing a card, subtracting  
02:13:43 4 mana or action points. I was trying to map those claims to  
02:13:48 5 behaviors or functions that were displayed by prior games.  
02:13:51 6 So you don't need source code to do that.

02:13:55 7 Q. Does the specification of the '137 and '481 patent  
02:13:59 8 disclose any source code?

02:14:01 9 A. No, it doesn't.

02:14:18 10 Q. Were you able to determine whether or not Clash Royale  
02:14:21 11 infringed or not infringed these patents without reviewing  
02:14:24 12 source code?

02:14:25 13 A. So that's a -- that's a tricky question, because on  
02:14:29 14 first blush, it looks like the game might work in a certain  
02:14:33 15 way. But when you slow it down and kind of step through  
02:14:36 16 frame-by-frame, you realize there's something more is going  
02:14:40 17 on.

02:14:40 18 So, really, you do need to open up the source code  
02:14:43 19 and examine how the flow of messages goes to the game. And  
02:14:47 20 that's why I prepared that flowchart so I could explain  
02:14:50 21 that for you.

02:14:51 22 Q. And do you recall the screenshots that were shown to  
02:14:54 23 Dr. Akl during his cross-examination?

02:14:56 24 A. Yes, I do.

02:14:56 25 Q. Do you believe that those accurately reflect the



02:15:00 1 operation of the source code?

02:15:01 2 A. Yes, they do.

02:15:07 3 Q. Do you believe that what was shown in those slides was  
02:15:12 4 an anomaly?

02:15:14 5 A. No, not at all. It's -- the -- the constant addition  
02:15:17 6 of Elixir is reflected in the Elixir bar. It's very much  
02:15:20 7 disclosed by the source code -- in fact, the line that we  
02:15:23 8 reviewed.

02:15:25 9 Q. GREE's counsel showed you your report where you  
02:15:36 10 provided some opinions regarding BattleForge. Do you  
02:15:43 11 recall that?

02:15:43 12 A. I do.

02:15:45 13 MR. KOHM: And can we please pull that up,  
02:15:47 14 Mr. Smith? It was, I believe, opening at 368. Oh, I'm  
02:16:03 15 sorry, wrong one -- 1059.

02:16:27 16 Could you pull up, I'm sorry, Paragraph 368 of  
02:16:31 17 Mr. Friedman's opening expert report?

02:16:35 18 Here, I'll just use -- Ms. Lockhart, can we use  
02:16:39 19 the ELMO?

02:16:41 20 Q. (By Mr. Kohm) And I believe it's -- it's -- in  
02:16:59 21 Paragraphs 1058 and 1059 where you were discussing -- I  
02:17:03 22 guess in this case, Clash Royale, do you discuss addition  
02:17:09 23 in either of these paragraphs?

02:17:12 24 A. Let me --

02:17:13 25 Q. Actually withdrawn. Let me rephrase.

02:17:14 1 In either of these paragraphs do you discuss the  
02:17:18 2 sequence in the relationship between the subtraction  
02:17:20 3 occurring after selection with -- in comparison to when  
02:17:24 4 addition occurs?

02:17:25 5 A. Let me just read this on paper. Yeah, I mean, I'm  
02:17:43 6 talking about how the players can play or move regardless  
02:17:46 7 of whether -- what's happening. Really, the -- the point  
02:17:48 8 here is the Elixir is growing regardless of whether you  
02:17:51 9 play or not.

02:17:52 10 Q. And with respect to BattleForge -- let me get  
02:18:21 11 the right -- GREE's counsel asked you whether you believe  
02:18:23 12 BattleForge met the claim limitations, correct?

02:18:27 13 A. That's right.

02:18:27 14 Q. And BattleForge includes some form of constant  
02:18:30 15 addition?

02:18:30 16 A. That's right. BattleForge -- the -- the growth of  
02:18:33 17 power in BattleForge is effectively identical to the growth  
02:18:35 18 of power -- or Elixir in Clash Royale. The timing is a  
02:18:42 19 little different. I think it's on 2-second increments  
02:18:45 20 instead of sub-second increments.

02:18:49 21 But in both cases, they're both real-time games,  
02:18:51 22 so BattleForge's power flows into that big round bubble at  
02:18:52 23 a certain rate. And in Clash Royale, Elixir flows into the  
02:18:55 24 Elixir meter at a certain rate. But addition in both games  
02:18:59 25 is happening constantly.

02:19:00 1 Q. And in this case, you've given the opinion that Clash  
02:19:06 2 Royale does not infringe, and yet BattleForge practices the  
02:19:10 3 limitations. Is your testimony inconsistent?

02:19:14 4 A. No, I don't think so.

02:19:15 5 Q. Why?

02:19:15 6 A. Well, for a couple of reasons. The -- the disclosure  
02:19:24 7 of constantly flowing Elixir having -- meeting a  
02:19:31 8 sequence -- let me say it this way.

02:19:33 9 If what you're trying to do is disclose that  
02:19:36 10 there's a sequence of selection, subtraction, and addition,  
02:19:40 11 then finding that sequence in the prior art is sufficient  
02:19:46 12 because one of ordinary skill would know -- and especially  
02:19:51 13 when combined with other references, but certainly even by  
02:19:53 14 itself, taking a look at the game, the real-time game that  
02:19:58 15 says, well, if I'm playing a card, I subtract its -- its --  
02:20:05 16 not Elixir -- its power, and then the meter goes up after  
02:20:09 17 that is a disclosure of that sequence.

02:20:11 18 The construction that was issued later actually  
02:20:14 19 said: Well, in order to infringe, you can only do that  
02:20:17 20 sequence. But if you know about the sequence, you know  
02:20:21 21 about the sequence.

02:20:24 22 So infringement requires the only test, which  
02:20:30 23 means that Clash Royale -- in order for it to infringe,  
02:20:33 24 must -- selection must precede subtraction, and subtraction  
02:20:40 25 must precede addition.

02:20:41 1 And so we see that sequence in the prior art, and  
02:20:44 2 the fact that other sequences also exist in the prior art  
02:20:47 3 does not change that disclosure.

02:20:48 4 Q. And are you -- with respect to Slides 4 and 5 that we  
02:20:53 5 looked at with you with the -- the loop, the game loop --

02:20:56 6 A. The flowcharts?

02:20:58 7 Q. Yes.

02:20:59 8 A. Yes.

02:20:59 9 Q. Are you aware any of similar functionality in Magic or  
02:21:03 10 BattleForge?

02:21:04 11 A. Well, I mean, the flowcharts were intended to reflect  
02:21:11 12 the operation of the Clash Royale source code. The flow of  
02:21:19 13 the game within Magic or within BattleForge would -- would  
02:21:26 14 in some respects be similar.

02:21:29 15 I mean, I -- the issue of sending a message to a  
02:21:31 16 server to sync up games, that would have been present in  
02:21:34 17 BattleForge but not in Magic because the flow of the game  
02:21:37 18 works differently.

02:21:38 19 Q. Let me be more specific.

02:21:40 20 In BattleForge, are you aware of a functionality  
02:21:45 21 that involves the 20-tick timer before deployment?

02:21:51 22 A. Oh, I'm not specifically aware of -- of the  
02:22:00 23 lag-prevention mechanism that -- that BattleForge uses.

02:22:23 24 MR. KOHM: No further questions, Your Honor.

02:22:25 25 THE COURT: You pass the witness?

02:22:26 1 MR. KOHM: I do.

02:22:28 2 THE COURT: All right. Is there additional  
02:22:29 3 cross-examination, Mr. Moore?

02:22:31 4 MR. MOORE: No, Your Honor.

02:22:32 5 THE COURT: Then you may step down, Mr. Friedman.

02:22:34 6 THE WITNESS: Thank you, Your Honor.

02:22:57 7 MR. KOHM: Your Honor, may Mr. Friedman be  
02:22:59 8 excused?

02:23:00 9 THE COURT: Is there objection?

02:23:02 10 MR. MOORE: Oh, sorry, no objection, Your Honor.

02:23:05 11 THE COURT: Then, Mr. Friedman, you are excused,  
02:23:09 12 sir. You're free to stay. You're free to leave.

02:23:16 13 Ladies and gentlemen, we're going to take a short  
02:23:19 14 recess at this moment.

02:23:20 15 If you will simply close your notebooks and leave  
02:23:23 16 them in your chairs. I expect this to be relatively short.

02:23:27 17 Follow all my instructions, please, including, of  
02:23:30 18 course, not to discuss the case with each other. We'll be  
02:23:34 19 back shortly to continue with the next witness.

02:23:34 20 The jury is excused for recess at this time.

02:23:36 21 COURT SECURITY OFFICER: All rise.

02:23:50 22 (Jury out.)

02:23:51 23 THE COURT: Counsel, I'm going to endeavor to keep  
02:23:58 24 this to 10 minutes.

02:24:00 25 The Court stands in recess.

02:40:35 1 (Recess.)

02:42:36 2 COURT SECURITY OFFICER: All rise.

02:42:39 3 THE COURT: Be seated, please.

02:44:26 4 Is Defendant prepared to call their next witness?

02:44:35 5 MR. SACKSTEDER: We are, Your Honor.

02:44:36 6 THE COURT: All right. Let's bring in the jury,

02:44:39 7 please.

02:44:39 8 COURT SECURITY OFFICER: All rise.

02:44:41 9 (Jury in.)

02:44:47 10 THE COURT: Please be seated.

02:45:11 11 Defendant, call your next witness.

02:45:18 12 MR. SACKSTEDER: Thank you, Your Honor.

02:45:19 13 Supercell calls Dr. Mark Claypool by trial

02:45:24 14 deposition video. And the exhibits that will be used in

02:45:27 15 that are DX-172, DX-173, DX-174, PTX-601, PTX-598 and

02:45:37 16 PTX-5.

02:45:39 17 THE COURT: All right. Proceed with the witness

02:45:40 18 by deposition.

02:45:42 19 (Videoclip played.)

02:45:58 20 QUESTION: Hi, Dr. Claypool.

02:46:01 21 ANSWER: Hi, Michael.

02:46:03 22 QUESTION: Would you please introduce yourself to

02:46:05 23 the jury.

02:46:05 24 ANSWER: Hi, I'm Mark Claypool.

02:46:07 25 QUESTION: What do you do for a living?

02:46:10 1 ANSWER: Of course. I'm a professor at Worcester  
02:46:15 2 Polytechnic Institute. That's a medium-sized engineering  
02:46:17 3 school in Worcester, Massachusetts, just outside of  
02:46:19 4 Boston.

02:46:19 5 QUESTION: What have you been asked to do today?

02:46:21 6 ANSWER: I've been asked to consider whether  
02:46:25 7 Supercell's Clash of Clans game infringes upon the '594  
02:46:28 8 patent.

02:46:28 9 QUESTION: Why can't you be testifying in the  
02:46:31 10 courtroom today?

02:46:32 11 ANSWER: Because of some of the medication I'm on,  
02:46:35 12 I'm immunocompromised. And, as you know, we've got the  
02:46:40 13 pandemic going on, and I've been advised by my specialist  
02:46:43 14 and my primary care doctor that I should not travel, so to  
02:46:48 15 avoid coming to Texas for this trial.

02:46:50 16 As I understand the science of it, is I would be  
02:46:52 17 more likely to get COVID if I was exposed, and if I did, it  
02:46:59 18 would be bad news. So I've been urged not to do that.

02:47:01 19 QUESTION: What patents have you examined for your  
02:47:04 20 opinions?

02:47:04 21 ANSWER: So I examined the-- sort of the shorthand  
02:47:07 22 is the '594 patent.

02:47:07 23 QUESTION: Are you being compensated for your  
02:47:09 24 time?

02:47:09 25 ANSWER: Yes, I am.

02:47:10 1 QUESTION: How much?

02:47:11 2 ANSWER: So it's \$375.00 an hour, and that's my  
02:47:14 3 normal rate.

02:47:15 4 QUESTION: Do you have any financial stake in the  
02:47:17 5 outcome of this case?

02:47:19 6 ANSWER: No, I do not.

02:47:21 7 QUESTION: Let's talk about your education and  
02:47:23 8 experience for a minute.

02:47:25 9 ANSWER: Okay.

02:47:25 10 QUESTION: How long you have been working in the  
02:47:27 11 field of video games, computer games, and gaming systems?

02:47:31 12 ANSWER: Yes, I've been working in the field for  
02:47:33 13 about 25 years or so.

02:47:35 14 QUESTION: Let's start with your education. What  
02:47:37 15 is your educational background in that field?

02:47:39 16 ANSWER: I have a Bachelor's of Arts in  
02:47:42 17 mathematics from Colorado College, and I got a sort of  
02:47:46 18 emphasis or minor in computer science there.

02:47:48 19 And then I went to graduate school at the  
02:47:53 20 University of Minnesota, and I got a Master's degree and a  
02:47:55 21 Ph.D. in computer science, and then I became a professor  
02:47:58 22 shortly after that.

02:47:59 23 QUESTION: Has your work focused on video games  
02:48:02 24 and computer games?

02:48:03 25 ANSWER: So my work at Worcester Polytechnic



02:48:07 1 Institute as a professor definitely has. I started a --  
02:48:10 2 I'm the founder of a one-of-a-kind major actually, in game  
02:48:14 3 development. And so I do teaching and curriculum  
02:48:17 4 development in all aspects of developing games.

02:48:19 5 My particular area of interest and specialty are  
02:48:23 6 the technical aspects of it, so I teach and research in  
02:48:27 7 computer games.

02:48:27 8 QUESTION: Have you published any literature, any  
02:48:30 9 articles, books in the field?

02:48:31 10 ANSWER: Yeah, I've been fairly prolific as a  
02:48:34 11 professor. Sort of peer-reviewed publications are our  
02:48:38 12 currency, and I have over a hundred of those. About half  
02:48:41 13 of them or so are on games and game-related technologies.

02:48:45 14 QUESTION: Besides your academic work, have you  
02:48:47 15 done other activities in professional organizations?

02:48:51 16 ANSWER: Yeah, so I'm involved professionally,  
02:48:54 17 it's called a service role, but I organize conferences.  
02:48:59 18 I'm part of steering committees, and I chair some  
02:49:02 19 conferences. And I'm on some editorial boards, and they're  
02:49:05 20 related to computer system aspects. So interactive audio  
02:49:08 21 and video and games, the areas.

02:49:09 22 QUESTION: Have you been recognized as an expert  
02:49:11 23 in your field?

02:49:13 24 ANSWER: Yes, I have. I've received several best  
02:49:15 25 paper awards on -- specifically, those are on some game

02:49:21 1 publications I've had, and I've also been -- received  
02:49:23 2 funding from some government agencies and from some  
02:49:27 3 industries.

02:49:28 4 Most recently I got some funding from Google.  
02:49:30 5 They're building a cloud game system called Stadia. So  
02:49:35 6 they needed my expertise and some help with some of the  
02:49:38 7 research with that. And Intel, they make the computers  
02:49:40 8 chips. They're also doing some of the same.

02:49:42 9 QUESTION: Thank you, Dr. Claypool.

02:49:44 10 ATTORNEY: Supercell offers Dr. Claypool as a  
02:49:47 11 technical expert in computer games and computer systems.

02:49:53 12 Any objection, counsel?

02:49:55 13 ATTORNEY: No objection.

02:49:57 14 ATTORNEY: Thank you, sir.

02:49:58 15 Mr. Smith, if you could put up Slide No. 1,  
02:50:02 16 please.

02:50:02 17 QUESTION: Dr. Claypool, do you recognize the  
02:50:05 18 slide deck that we're looking at?

02:50:07 19 ANSWER: So this is the first slide of the deck  
02:50:08 20 that I prepared to help explain the testimony I'm going to  
02:50:13 21 give today.

02:50:13 22 QUESTION: All right. And you have reviewed the  
02:50:15 23 expert report of Dr. Akl and considered his opinions  
02:50:18 24 regarding infringement of the '594 patent?

02:50:20 25 ANSWER: Yes, I have.

02:50:22 1 QUESTION: And you understand that Dr. Akl  
02:50:25 2 contends that Supercell infringes Claim 2 of the '594  
02:50:29 3 patent, correct?

02:50:29 4 ANSWER: I understand that's what he says, yes.

02:50:32 5 QUESTION: Do you agree with that?

02:50:33 6 ANSWER: No, I do not agree. I do not agree that  
02:50:36 7 Supercell's Clash of Clans infringes Claim 2 of the '594  
02:50:41 8 patent.

02:50:41 9 QUESTION: Before we talk about your opinion about  
02:50:44 10 whether Supercell infringes Claim 2, let's talk about the  
02:50:49 11 background of the '594 patent first.

02:50:51 12 Can you tell me what the '594 patent is about?

02:50:54 13 ANSWER: So the '594 patent -- if you can advance  
02:51:02 14 to the next slide. I'm not sure if you want to come back  
02:51:04 15 to this one. If you want to advance to the next slide,  
02:51:07 16 please, I can explain it better.

02:51:08 17 So this is an excerpt from the background section  
02:51:10 18 of the patent. And -- so I've highlighted a few passages.

02:51:14 19 At the time the patent was filed, they were -- the  
02:51:17 20 idea of downloading games to smartphones was well-known.  
02:51:21 21 Much as today, you can download an app to your smartphone.

02:51:24 22 There were some well-known city games -- city  
02:51:27 23 building games they're often called -- where you build a  
02:51:30 24 virtual city and you could share it in a social manner with  
02:51:32 25 other people.

02:51:33 1 And, in particular, one of the popular games,  
02:51:35 2 iconic versions was called SimCity. In addition, at the  
02:51:38 3 time the patent was filed, Clash of Clans was also  
02:51:40 4 well-known.

02:51:40 5 QUESTION: You mentioned a couple of times the  
02:51:43 6 time the patent was filed.

02:51:45 7 ATTORNEY: Mr. Smith, if you could go back to the  
02:51:47 8 previous slide.

02:51:48 9 QUESTION: Do you see the -- the time that the  
02:51:50 10 patent was filed on that slide?

02:51:53 11 ANSWER: Yeah, so -- so this slide shows some of  
02:51:56 12 the relevant information. On the left, that's the cover  
02:51:58 13 page of the patent in question, the '594 patent.

02:52:00 14 And the right side of this -- of this slide has a  
02:52:04 15 blow-out which sort of shows some of the pertinent  
02:52:07 16 information on it.

02:52:07 17 And then the bottom right, to find the filing date  
02:52:11 18 you'd look at foreign application and priority date, and  
02:52:13 19 you can see it's highlighted here. It's September 27th,  
02:52:16 20 2013. And then there's a JP there. That indicates the  
02:52:19 21 patent was filed in Japan.

02:52:20 22 QUESTION: Thank you, Doctor.

02:52:22 23 ATTORNEY: Can we move to the slide that's after  
02:52:25 24 this one now, Mr. Smith.

02:52:28 25 QUESTION: And you referenced Clash of Clans. Can

02:52:29 1 you point that out in the background section, please?

02:52:31 2 ANSWER: Yes, you can see it on the text here,  
02:52:34 3 again, the blow out of the background section on the right.

02:52:36 4 And so at the bottom of that, you can see where  
02:52:38 5 the background to this patent and the patent writers were  
02:52:40 6 aware of Clash of Clans at the time. And so they -- they  
02:52:42 7 cite it, they reference that game, Clash of Clans.

02:52:45 8 QUESTION: All right. And were you aware of Clash  
02:52:48 9 of Clans before you started working on this lawsuit?

02:52:51 10 ANSWER: Yeah, definitely. Clash of Clans is  
02:52:54 11 well-known by people that study games in this space. It is  
02:52:58 12 popular. Has some interesting game mechanics that are  
02:53:02 13 studied. I've even played it a few times.

02:53:04 14 QUESTION: The patent I think you mentioned is  
02:53:07 15 about creating and applying a template. Can you walk us  
02:53:10 16 through what that is?

02:53:13 17 ANSWER: Sure. I'd be happy to.

02:53:15 18 There's a figure in the patent, Figure 4, that  
02:53:18 19 does a nice visual of this, and I'd be happy to explain how  
02:53:21 20 this indicates creation and application of a template.

02:53:25 21 QUESTION: Please do.

02:53:26 22 ANSWER: So this is a full page of Figure 4 here  
02:53:30 23 on this slide.

02:53:31 24 QUESTION: Please do explain how that process  
02:53:33 25 works as it's disclosed in the patent.

02:53:35 1 ANSWER: Yes. So this is now, again, an excerpt  
02:53:37 2 of that same figure. And so the Figure 4 -- let me -- let  
02:53:41 3 me start with reading it from the top down. So I'll start  
02:53:45 4 with the top of the figure.

02:53:46 5 So at the top of the figure, it's highlighted in  
02:53:49 6 yellow, we have a game space. So a game space, think of a  
02:53:53 7 two-dimensional grid, where you have pieces -- objects in  
02:53:57 8 the game that are in the grid, and they're depicted here as  
02:54:00 9 those shapes, so there's circles, and diamonds, and  
02:54:04 10 squares. And those are all different kinds of buildings.  
02:54:07 11 And they -- the player would put them in the game space in  
02:54:09 12 a certain arrangement.

02:54:12 13 ATTORNEY: Can we go to the next slide?

02:54:15 14 ANSWER: So -- thank you.

02:54:16 15 You can see what happens next is that -- so  
02:54:19 16 there's a highlighted region inside, and so at some time  
02:54:22 17 the player has decided they want to keep that particular  
02:54:25 18 formation, so those six highlighted squares with the  
02:54:28 19 buildings and their relative positions, I want to keep  
02:54:32 20 track of those.

02:54:33 21 And it's the -- it's -- the patent term uses a  
02:54:35 22 template. So it's going to create a template of those  
02:54:38 23 buildings and their positions, and that gets saved. So you  
02:54:42 24 can see it down -- there's an arrow going down to 410.  
02:54:46 25 That saves, so that creates the template for the player.

02:54:49 1 QUESTION: And what happens then?

02:54:50 2 ANSWER: So with that template created, at some  
02:54:55 3 time later, the player may wish to apply that template.  
02:54:57 4 And so application works as depicted in this picture where  
02:55:00 5 the player has a different game space. So there's  
02:55:03 6 buildings here again, those same shapes. They're in a  
02:55:08 7 different formation in this case. And the player would  
02:55:10 8 apply that template to a region of the game space, so in  
02:55:13 9 this case, the middle of it.

02:55:14 10 So they're applying -- you can see those dashed  
02:55:17 11 lines labeled 421 right in the middle. That's where the  
02:55:20 12 player is applying that same template that's been -- been  
02:55:23 13 created.

02:55:24 14 And that would -- the -- the game would then move  
02:55:26 15 the pieces in relation to those -- those shapes where they  
02:55:31 16 are saved to the right location.

02:55:33 17 And the final result is on the bottom. So the  
02:55:35 18 very bottom square is the final location where the pieces  
02:55:38 19 have been moved into the -- their specific ordering and  
02:55:43 20 position based on that template that's been applied.

02:55:46 21 QUESTION: All right. Can you summarize the  
02:55:47 22 process for the jury so we have it all together?

02:55:52 23 ANSWER: So then again depicted in the same figure  
02:55:53 24 from the top to bottom, you know, the top part was the  
02:55:54 25 creation of a template, and then the bottom aspect of this

02:55:57 1 figure shows the application. That's what the patent deals  
02:56:00 2 with.

02:56:00 3 QUESTION: All right. Thank you, Doctor.

02:56:01 4 Now that we have gone through the basics of the  
02:56:06 5 patent, let's start talking about your non-infringement  
02:56:10 6 positions.

02:56:11 7 ATTORNEY: If we can move on to the next slide.

02:56:15 8 QUESTION: Can you explain what this slide shows?

02:56:17 9 ANSWER: Yes. This is the text from the '594  
02:56:20 10 patent for Claim 1. So it's the Claim 1 text with some of  
02:56:24 11 the text highlighted in red.

02:56:26 12 QUESTION: And what is it -- what is the meaning  
02:56:28 13 of the -- the highlighting of those portions of the claim?

02:56:32 14 ANSWER: Yeah, the highlighting is intended to  
02:56:35 15 indicate the elements of this claim that are not met by  
02:56:38 16 Clash of Clans.

02:56:41 17 QUESTION: All right. And what impact does that  
02:56:43 18 have? We're talking about Claim 1. What impact does that  
02:56:46 19 have on your opinion regarding Claim 2?

02:56:49 20 ANSWER: So Claim 2 is a dependent claim that  
02:56:51 21 depends upon Claim 1. So in order to -- for Claim 2 to be  
02:56:55 22 met, each and every element of Claim 1 must be met and each  
02:57:00 23 and every element of Claim 2 must be met.

02:57:02 24 QUESTION: So if one element of either claim is  
02:57:05 25 not present, then how does that affect your opinion



02:57:08 1 regarding infringement of Claim 2?

02:57:11 2 ANSWER: Right. So if an element of Claim 1 is  
02:57:13 3 not met, then by -- by the legal definition, Claim 2 does  
02:57:18 4 not -- cannot be infringed.

02:57:20 5 QUESTION: What does GREE accuse of infringing?

02:57:25 6 ANSWER: So GREE accuses the Clash of Clans layout  
02:57:30 7 editor of -- of meeting Claim 1, and specifically when the  
02:57:35 8 player selects the set as active button in the layout  
02:57:39 9 editor.

02:57:39 10 QUESTION: And why, in your opinion, does the  
02:57:44 11 Clash of Clans not satisfy Claim 1?

02:57:47 12 ANSWER: Yeah, so that -- that action, the layout  
02:57:53 13 editor set as active, does not meet again the red -- red  
02:57:56 14 elements. It does not meet the elements of moving the game  
02:58:01 15 contents arranged from their first positions to their  
02:58:05 16 second positions.

02:58:06 17 QUESTION: Do you have any demonstrative exhibits  
02:58:07 18 that would help the jury understand this concept?

02:58:08 19 ANSWER: Yes, I do. I actually have some videos I  
02:58:11 20 can discuss that were created by GREE's expert, Dr. Akl.

02:58:14 21 QUESTION: And this first one is Slide 13.

02:58:18 22 Can you explain to the jury what we're looking at?

02:58:22 23 ANSWER: Yes. So this is a video created -- I  
02:58:24 24 presume this is Dr. Akl -- where the player, he's in his  
02:58:27 25 home village, and he selected a button that takes him to

02:58:31 1 the layout editor.

02:58:31 2 And in the layout editor, the player is --

02:58:34 3 Dr. Akl, presumably, can choose which village is active.

02:58:37 4 And so there -- it may be hard to see quickly. But there's

02:58:40 5 an active village on the left, he chose a middle slot, and

02:58:44 6 he made that the new active village.

02:58:47 7 QUESTION: And why does GREE allege that changing

02:58:52 8 layouts practices or uses what's in Claim 1?

02:58:57 9 ANSWER: So GREE is claiming that by changing the

02:59:00 10 active layout, they're moving positions of the buildings

02:59:03 11 from one location to the other. And that stems from a

02:59:07 12 misunderstanding of actually how the layout code -- layout

02:59:11 13 editor code works.

02:59:11 14 QUESTION: Can you explain your basis for saying

02:59:15 15 that that is a misunderstanding and that this portion of

02:59:21 16 the claim is not used?

02:59:22 17 ANSWER: Yeah, I'd be happy to.

02:59:23 18 I have a demonstrative that shows this.

02:59:28 19 So depicted in the top left of this slide is what

02:59:32 20 might be the player's active village at the current time,

02:59:38 21 so this is the current village, the location of the

02:59:41 22 buildings, and where they're laid out.

02:59:44 23 At some time, the player might wish to change the

02:59:44 24 active village layout so they would enter the layout editor

02:59:49 25 like we saw in the video, and press the set as active

02:59:52 1 button that's indicated by the blue arrow right below it.

02:59:56 2           So the player sometimes says set as active to  
03:00:00 3 another layout. Effectively what the layout editor is  
03:00:02 4 doing is clearing the village. So it's going to reset the  
03:00:05 5 positions -- the positions of all the buildings in the  
03:00:08 6 village to a new location.

03:00:11 7           So these are game objects that have additional  
03:00:15 8 initialization and they're moved to a different location,  
03:00:17 9 and that's shown in the bottom right.

03:00:19 10           (Videoclip stopped.)

03:00:19 11           MR. SACKSTEDER: Your Honor, I apologize for  
03:00:21 12 interrupting. It just occurs to me that there is a little  
03:00:24 13 source code discussion in this section. So we would need  
03:00:27 14 to seal the record and the courtroom. I apologize for  
03:00:30 15 interrupting in the middle.

03:00:32 16           THE COURT: All right. Based on counsel's  
03:00:34 17 request, I'll order the courtroom sealed.

03:00:36 18           Those present not subject to the protective order  
03:00:38 19 that's been entered in this case should excuse themselves  
03:00:41 20 at this time and remain outside the courtroom until the  
03:00:44 21 courtroom is unsealed and they're invited to return.

03:00:48 22           (Courtroom sealed.)

03:00:48 23           (This portion of the transcript is sealed and  
03:00:48 24 filed under separate cover as

03:00:49 25           Sealed Portion No. 5.)

03:00:49 1 (Courtroom unsealed.)

03:34:10 2 (Witness sworn.)

03:34:11 3 THE COURT: Please come around, have a seat on the  
03:34:19 4 witness stand, sir.

03:34:20 5 MR. DACUS: May I approach and pass out binders,  
03:34:24 6 Your Honor?

03:34:25 7 THE COURT: You may, counsel.

03:34:45 8 All right. Counsel, you may proceed with your  
03:34:47 9 direct examination.

03:34:48 10 MR. SACKSTEDER: Thank you, Your Honor.

03:34:48 11 JOSE ZAGAL, PH.D., DEFENDANT'S WITNESS, SWORN

03:34:48 12 DIRECT EXAMINATION

03:34:49 13 BY MR. SACKSTEDER:

03:34:49 14 Q. Good afternoon, Dr. Zagal?

03:34:51 15 A. Good afternoon.

03:34:52 16 Q. Will you introduce yourself to the jury, please?

03:34:54 17 A. Hello, my name is Dr. Jose Zagal.

03:34:56 18 Q. What do you do for a living, sir?

03:34:58 19 A. I'm a professor at the University of Utah where I teach  
03:35:02 20 and do research on games.

03:35:03 21 Q. Do you have any particular area of expertise?

03:35:05 22 A. Yes, I do. I'm an expert now on games and design,  
03:35:10 23 computer-supported learning, and also computer science.

03:35:13 24 Q. Would you tell the jury why you're here today?

03:35:16 25 A. I'm here to provide testimony and evidence in the

03:35:22 1 Supercell/GREE case.

03:35:23 2 Q. All right. And what specifically issues are you going  
03:35:26 3 to be testifying about?

03:35:26 4 A. About two patents, the '655 and the '873.

03:35:30 5 Q. And are you testifying as an expert witness?

03:35:32 6 A. Yes, I am.

03:35:33 7 Q. Are you being compensated for your time here?

03:35:36 8 A. Yes, I am.

03:35:37 9 Q. How much?

03:35:38 10 A. \$375.00 per hour.

03:35:41 11 Q. Is that your normal expert services fee?

03:35:44 12 A. Yes, that is.

03:35:46 13 Q. Do you have any stake in the outcome of this lawsuit?

03:35:49 14 A. No, I do not.

03:35:50 15 Q. Have you ever testified in trial or in a hearing as an  
03:35:54 16 expert witness before?

03:35:55 17 A. No, this is actually my first time on the stand.

03:35:59 18 THE COURT: Since it's your first time, let me ask  
03:36:01 19 you to slow down just a little bit with your answers,  
03:36:05 20 please, Dr. Zagal.

03:36:07 21 THE WITNESS: Yes, Your Honor, my apologies.

03:36:08 22 THE COURT: Not a problem.

03:36:09 23 Let's continue, counsel.

03:36:11 24 Q. (By Mr. Sacksteder) Did you prepare any slides to  
03:36:14 25 assist you to illustrate your testimony?

03:36:15 1 A. Yes, I did.

03:36:17 2 MR. SACKSTEDER: Can we see those?

03:36:18 3 Q. (By Mr. Sacksteder) Are these the slides that we're  
03:36:20 4 looking at, the opening slide on the page --

03:36:22 5 A. Yes.

03:36:23 6 Q. -- on the screen?

03:36:24 7 How long you have worked in the field again?

03:36:26 8 A. Over 20 years.

03:36:27 9 Q. Will you tell us about your education in this field?

03:36:30 10 A. Sure. I have a Ph.D. in computer science, which I  
03:36:35 11 obtained in 2008 from Georgia Institute of Technology.

03:36:38 12 I also have a Master's of Science in engineering  
03:36:42 13 sciences. I'm also a civil industrial engineer with a  
03:36:46 14 computer science diploma. And I'm also a bachelor of  
03:36:48 15 engineering sciences.

03:36:49 16 All these other degrees I obtained in Chile from  
03:36:54 17 the Pontificia Universidad Católica de Chile.

03:36:55 18 Q. Have you held any positions in your field outside of  
03:36:58 19 academics?

03:36:59 20 A. Yes, I have.

03:37:00 21 Q. Will you explain those to the jury, please?

03:37:02 22 A. I have served as a game designer, game programmer,  
03:37:07 23 director of community and content development for online  
03:37:11 24 websites, and also game designer and executive director on  
03:37:16 25 a variety of different projects.

03:37:19 1 Q. Were those positions early in your career?

03:37:21 2 A. Yes, they were.

03:37:22 3 Q. And after that, what did you do?

03:37:24 4 A. After I obtained my Ph.D., I was hired as an assistant  
03:37:31 5 professor by DePaul University in Chicago where I was  
03:37:35 6 invited to join the ranks of the faculty in the game  
03:37:39 7 program at that university.

03:37:40 8 Q. Are you still at DePaul University?

03:37:42 9 A. No, I am no longer at DePaul University.

03:37:46 10 Q. Where are you now?

03:37:47 11 A. I'm currently at the University of Utah.

03:37:49 12 Q. And what kind of classes do you teach at the University  
03:37:53 13 of Utah?

03:37:54 14 A. So I exclusively teach classes that are related to the  
03:37:57 15 game program at both the undergraduate and graduate level.

03:38:01 16 I teach classes in game design, game development, I've  
03:38:06 17 taught some of our project's classes, video game ethics,  
03:38:10 18 and mobile game design is also a class that I taught.

03:38:14 19 Q. Are you what they call a full professor now?

03:38:17 20 A. Yes, I am. I was recently promoted.

03:38:20 21 Q. What does that mean?

03:38:21 22 A. Full professor is the highest rank you can achieve as a  
03:38:25 23 professor within the university system.

03:38:26 24 Q. Besides being a professor, are you involved in any  
03:38:29 25 other professional activities in your field?

03:38:30 1 A. Yes. I also perform what are called service duties,  
03:38:35 2 which is service or volunteer work for professional and  
03:38:38 3 also academic organizations.

03:38:39 4 Q. Are you a member of any sort of -- strike that?

03:38:43 5 Have you been recognized as an expert in the  
03:38:46 6 field?

03:38:48 7 A. Yes, I have.

03:38:48 8 Q. Please explain that to the jury?

03:38:51 9 A. So I have won a number of awards. The two awards that  
03:38:57 10 I am most proud of, earlier this year I was named a fellow  
03:39:00 11 by the Higher Education Video Game Alliance, HEVGA. In  
03:39:06 12 2016, I was named a distinguished scholar by the Digital  
03:39:14 13 Games Research Association.

03:39:14 14 I also have numerous publications, all game  
03:39:16 15 related, books, peer-reviewed journal articles,  
03:39:16 16 peer-reviewed conference articles, and the like.

03:39:20 17 MR. SACKSTEDER: Your Honor, I offer Dr. Zagal as  
03:39:21 18 a technical expert in computer science and game design and  
03:39:25 19 development.

03:39:26 20 THE COURT: Is there objection?

03:39:27 21 MR. MOORE: No objection, Your Honor.

03:39:28 22 THE COURT: Then, without objection, the Court  
03:39:30 23 will recognize the witness as an expert in those designated  
03:39:35 24 fields.

03:39:35 25 Please continue.



03:39:35 1 MR. SACKSTEDER: Thank you, Your Honor.

03:39:36 2 May we move to the next slide, Mr. Smith.

03:39:41 3 Q. (By Mr. Sacksteder) What do we see on this slide,

03:39:43 4 Dr. Zagal?

03:39:43 5 A. We see a summary of my opinions.

03:39:46 6 Q. Will you please walk through them quickly for the jury?

03:39:48 7 A. Brawl Stars does not infringe the '873 patent. Clash

03:39:51 8 Royale does not infringe the '655 patent. The '873 is

03:39:57 9 invalid, and the '655 patent is also invalid.

03:40:00 10 Q. Can you tell the jury in general terms what the '873

03:40:08 11 patent is about?

03:40:08 12 A. Sure. So the '873 patent describes a method and system

03:40:12 13 for controlling and using a two-step fire process where you

03:40:18 14 aim and then fire on a handheld device that uses a

03:40:23 15 touchscreen and is also connected to a server.

03:40:25 16 Q. Are we looking at the first page of the '873 patent?

03:40:28 17 A. Yes, we are.

03:40:29 18 Q. And is the filing date of the '873 patent shown?

03:40:34 19 A. Yes.

03:40:35 20 Q. What is that date?

03:40:37 21 A. In the United States, October 24th, 2017, up on the top

03:40:43 22 right part of the screen.

03:40:44 23 Q. Actually, I was referring to the bottom right of the

03:40:47 24 screen.

03:40:48 25 A. Yes. So there we see the original filing date,

03:40:52 1 February 26th of 2013. And after that there is the letters  
03:40:56 2 J and P which indicates that this patent was originally  
03:41:00 3 filed in Japan.

03:41:00 4 Q. And where it says date of patent, I believe, is that  
03:41:03 5 the issued date of the patent rather than the filing date?

03:41:06 6 A. I believe that is the filing.

03:41:10 7 Q. Do you see in Line 22 where it says: Filed December  
03:41:17 8 13th, 2016?

03:41:18 9 A. In the text of the -- on the front page, you mean?

03:41:27 10 Q. On the left side, there is 22 in parentheses?

03:41:30 11 A. Yes, I do.

03:41:34 12 Q. All right. So is that the filing date in the U.S.?

03:41:37 13 A. Yes.

03:41:38 14 Q. All right. Thank you, Dr. Zagal?

03:41:39 15 MR. SACKSTEDER: Let's look at the next slide,  
03:41:42 16 please.

03:41:42 17 Q. (By Mr. Sacksteder) What are we looking at here,  
03:41:45 18 Dr. Zagal?

03:41:45 19 A. So this is a figure, Figure 2 from the '873 patent.

03:41:49 20 Q. What does it show sort of at a high level?

03:41:53 21 A. At a high level, it sort of describes how the process  
03:41:55 22 of aiming and firing is to take place.

03:41:59 23 Q. Can you walk the jury through how it does that?

03:42:02 24 A. Yeah. So there's a blow-out there on the right-hand  
03:42:05 25 side of the top portion of the flow. This is called a

03:42:09 1 flowchart, and it kind of is a way to describe a follow up  
03:42:14 2 process.

03:42:15 3           So you stop at the top. I've highlighted a couple  
03:42:18 4 of elements there in yellow. The diamond is sort of a  
03:42:21 5 decision point. So the computer program makes a decision  
03:42:24 6 about something. This one says touch on screen. So it's  
03:42:27 7 asking has someone touched the screen. If --

03:42:30 8 Q. And then what happens?

03:42:31 9 A. So depending on whether someone has touched the screen,  
03:42:37 10 you would then follow either the yes arrow or the no arrow.

03:42:40 11 Q. If someone has touched on the screen, what happens  
03:42:42 12 then?

03:42:42 13 A. So then we would follow the yes arrow and go down to  
03:42:45 14 Element S102. At that point the program needs to search a  
03:42:45 15 predetermined range from the touch position.

03:42:50 16           So based on where the person touches the screen,  
03:42:53 17 look around in that area, and you would then move on to the  
03:42:57 18 next position point, which is the next diamond S103.

03:43:02 19 Q. And what happens there?

03:43:03 20 A. At that point we need to answer another question -- or  
03:43:05 21 the computer program needs to do that -- which is, is an  
03:43:08 22 attackable target at the touch position.

03:43:10 23 Q. If the answer is yes, what happens?

03:43:12 24 A. Then you would move along the right side of the  
03:43:15 25 flowchart, and then we'd get to the next box, which is

03:43:17 1 highlighted in yellow, S104.

03:43:20 2 Q. And what happens there?

03:43:21 3 A. Then the program needs to display a shooting button  
03:43:21 4 circle.

03:43:28 5 Q. Let me stop you there, Doctor. As described in the  
03:43:33 6 patent, is there an example of a shooting button circle?

03:43:37 7 A. Yes, there is. There are other figures that -- in the  
03:43:39 8 patent that show examples of what a shooting button circle  
03:43:43 9 could look like.

03:43:44 10 MR. SACKSTEDER: Can we move to the next slide  
03:43:47 11 just for a moment?

03:43:47 12 Q. (By Mr. Sacksteder) Do you see it there?

03:43:48 13 A. Yes, I do.

03:43:49 14 Q. Where do we see it there?

03:43:51 15 A. So we see Figure 3, displays the shooting button  
03:43:54 16 circle, the letters at the top right, which says, SC  
03:43:55 17 indicate shooting circle. We also see an explanation of  
03:43:59 18 that, highlighted in yellow, on the left-hand side.

03:44:01 19 Q. And what does the yellow-highlighted language say, sir?

03:44:04 20 A. I read the shooting button circle, SC, simulates an  
03:44:09 21 image of an optical sight scope.

03:44:11 22 MR. SACKSTEDER: Can we go back to the previous  
03:44:13 23 slide?

03:44:14 24 Q. (By Mr. Sacksteder) What happens after the shooting  
03:44:16 25 button circle is displayed on the right-hand side?

03:44:19 1 A. The program, again, asks the question and needs to  
03:44:22 2 determine if someone has touched in the circle.

03:44:25 3 Q. And then what happens if someone has?

03:44:27 4 A. If someone has, you follow the yes arrow down, and then  
03:44:32 5 the program needs to execute the shooting and hit the  
03:44:35 6 attack target.

03:44:36 7 Q. Means it shoots; is that right?

03:44:38 8 A. That is correct.

03:44:39 9 MR. SACKSTEDER: Can we go to the slide with  
03:44:42 10 DX-198, please, Mr. Smith? Let's leave it at this point  
03:44:51 11 for just a moment.

03:44:51 12 Q. (By Mr. Sacksteder) What is being shown on the slide  
03:44:53 13 with DX-198, Dr. Zagal?

03:44:55 14 A. This is a video of a game that was being developed by  
03:44:58 15 GREE.

03:44:58 16 Q. What's the name of the game in this video?

03:45:03 17 A. At this point in time the game was called World  
03:45:10 18 Assault.

03:45:10 19 Q. Did it have another game?

03:45:12 20 A. Yes. Earlier, the game had a different name, which was  
03:45:14 21 War Corps. But they changed the name during development.

03:45:14 22 Q. Why are you showing us this video of this game?

03:45:17 23 A. This video shows a particular embodiment or an example  
03:45:20 24 of what the patent could refer to. It is my understanding  
03:45:25 25 that the inventor of the patent also worked on the game.

03:45:30 1 Q. That was Mr. Nagano that we heard from a couple days  
03:45:34 2 ago?

03:45:35 3 A. I believe so.

03:45:38 4 MR. SACKSTEDER: So if we can jump to about 3  
03:45:41 5 minutes and 10 seconds on the video and play that.

03:45:44 6 Q. (By Mr. Sacksteder) And, Dr. Zagal, can you explain  
03:45:46 7 what we're looking at?

03:45:50 8 A. So this is the person tapped on the screen, and these  
03:45:55 9 two circles appeared. And now the person is going to tap  
03:45:58 10 again, there. And we saw a number that was in red  
03:46:01 11 indicating that the attack has happened; in this case, a  
03:46:04 12 head shot was obtained. So the enemy target was hit.

03:46:07 13 Q. And that is a game that was designed and not released  
03:46:12 14 by GREE, correct?

03:46:12 15 A. It was not released by GREE.

03:46:16 16 Q. What did you do to analyze whether Supercell's Brawl  
03:46:22 17 Star game infringes the '873 patent?

03:46:24 18 A. So the process I followed, briefly, is I looked at all  
03:46:30 19 the claims that were being asserted, and I compared those  
03:46:33 20 claims to the game, in order to determine whether or not  
03:46:35 21 they appeared in the game.

03:46:37 22 MR. SACKSTEDER: Can we move to the next slide?  
03:46:39 23 And the next one?

03:46:45 24 Q. (By Mr. Sacksteder) And, Dr. Zagal, please explain  
03:46:47 25 what is on the screen now?

03:46:48 1 A. So on this screen we can see two of the -- the claims  
03:46:51 2 that are being asserted, Claims 8 and 10. They are very  
03:46:55 3 similar to each other. Claim 10 is a method claim, and  
03:46:59 4 Claim 8 is a systems claim.

03:47:00 5 Q. You have a couple of highlights in those claims?

03:47:02 6 A. Yes, I do. I believe the highlights are an aspect of  
03:47:06 7 the claims that is not present in Brawl Stars.

03:47:08 8 Q. And what does this highlighted element of the claims  
03:47:13 9 require?

03:47:14 10 A. So this -- I'm -- I'm going to read it from Claim 8.

03:47:19 11 Control the display to display a frame indicative  
03:47:23 12 of a shooting effective range in accordance with the  
03:47:25 13 position of the first touch operation.

03:47:28 14 And a portion of this claim was also construed by  
03:47:32 15 the Court.

03:47:33 16 Q. Let's look at that.

03:47:34 17 A. So the phrase, "in accordance with a position of the  
03:47:39 18 first touch operation," I have to use the Court's  
03:47:41 19 construction to understand that. And the Court's  
03:47:45 20 construction is: In response to and based on the position  
03:47:48 21 of the first touch operation.

03:47:50 22 Q. Do you have an opinion about whether Brawl Stars uses  
03:47:54 23 that claim element?

03:47:54 24 A. Brawl Stars does not use this claim element.

03:47:58 25 Q. Why do you have that opinion, Doctor?

03:48:01 1 A. Because I analyzed the game and saw how it operates.

03:48:08 2 Q. In what way does Brawl Stars operate differently?

03:48:11 3 A. I think the main reason is that -- so the claim

03:48:18 4 requires a frame to appear on the screen. And the frame

03:48:21 5 needs to appear in response to and based on a position of

03:48:25 6 the first touch operation. In the case of Brawl Stars, it

03:48:29 7 does not do that, based on the position of the first touch

03:48:32 8 operation.

03:48:32 9 Q. And you and Dr. Akl both made some videos --

03:48:35 10 A. Yes.

03:48:35 11 Q. -- for your opinions in this case, correct?

03:48:38 12 A. Yes.

03:48:38 13 Q. All right.

03:48:39 14 MR. SACKSTEDER: Let's look at PX-140.

03:48:43 15 Q. (By Mr. Sacksteder) Is this one of Dr. Akl's videos?

03:48:45 16 A. This is one of Dr. Akl's videos.

03:48:47 17 Q. What does it show?

03:48:49 18 A. So if we can hit play, we can -- so in this case

03:48:56 19 Dr. Akl is going to play using a character called Shelly.

03:48:59 20 He's now entering the game. It's a three versus

03:49:03 21 three-player game.

03:49:04 22 Q. Okay. Is that the end of that part of the video?

03:49:07 23 A. I believe so.

03:49:08 24 Q. All right. And -- and Shelly is a brawler; is that

03:49:12 25 right?



03:49:12 1 A. Yes, Shelly is it one of the brawlers in the Brawl

03:49:15 2 Stars game.

03:49:15 3 Q. Do you have any understanding of roughly how many other

03:49:19 4 brawlers there are?

03:49:19 5 A. I believe there are 39.

03:49:20 6 Q. And how many of those brawlers did Dr. -- Dr. Akl

03:49:25 7 analyze in his infringement opinion?

03:49:26 8 A. He only analyzed Shelly.

03:49:30 9 Q. All right.

03:49:31 10 MR. SACKSTEDER: Let's continue with the video.

03:49:36 11 A. So here the game has started. The character Shelly

03:49:39 12 with a green circle, that's the character that's being

03:49:42 13 controlled by Dr. Akl. Up on the top screen, we can see

03:49:47 14 there are two sort of buttons. There's a blue one on the

03:49:51 15 left and a red one on the right.

03:49:52 16 I believe Dr. Akl testified that the characters

03:49:57 17 controlled the movement of the character. The -- where the

03:49:59 18 character is located on the screen is determined by what

03:50:02 19 the player does with the left button -- the blue one in

03:50:05 20 this case.

03:50:05 21 Q. All right. And is that your opinion also about how the

03:50:07 22 game works?

03:50:08 23 A. Yes, that is also my opinion.

03:50:10 24 Q. All right. And then what does the red button on the

03:50:13 25 right side of the screen do?

03:50:14 1 A. The right side of the screen, including the red button,  
03:50:18 2 is what is used to control the aiming and firing.  
03:50:22 3 Q. Do you have an understanding of what Dr. Akl says is  
03:50:24 4 the frame indicative of a shooting effective range?  
03:50:29 5 A. Yes.  
03:50:30 6 Q. What is that?  
03:50:31 7 A. Dr. Akl argues that the cone -- in this case we can see  
03:50:34 8 the character Shelly, there's a cone coming out from that  
03:50:37 9 character -- with a white outline. Dr. Akl contends that  
03:50:41 10 that is the frame.  
03:50:42 11 Q. And does the cone ever appear anywhere besides  
03:50:49 12 emanating out from the character?  
03:50:51 13 A. No.  
03:50:53 14 Q. And what determines the position of the character  
03:50:59 15 Shelly in the screenshot we're looking at?  
03:51:02 16 A. So the position of the cone is based on a character,  
03:51:05 17 and the position of a character is based on what the player  
03:51:07 18 is doing with the blue button with the left thumb stick.  
03:51:14 19 Q. Yeah, it's been called a joystick, I think, some in  
03:51:16 20 this trial. Would you agree with that terminology, as  
03:51:19 21 well?  
03:51:19 22 A. Yes, that is also valid terminology.  
03:51:24 23 Q. And is the blue joystick the same joystick or a  
03:51:28 24 different joystick from the one that Dr. Akl alleges  
03:51:32 25 infringes the claim?

03:51:32 1 A. It's a different joystick.

03:51:34 2 Q. You mentioned you made your own videos, too?

03:51:36 3 A. I did.

03:51:37 4 Q. All right.

03:51:37 5 MR. SACKSTEDER: Can we go to DX-514, please,

03:51:40 6 Mr. Smith?

03:51:41 7 Q. (By Mr. Sacksteder) What are we looking at here?

03:51:42 8 A. So there are two ways to fire your weapon in the game.

03:51:45 9 And in this first video, I'm going to show one way to do

03:51:48 10 that, and then I have a second video that shows the

03:51:52 11 different way.

03:51:53 12 So here I'm tapping on the screen, and you'll

03:51:56 13 notice that Shelly didn't do anything. When I tap on

03:51:56 14 screen on right side, Shelly fires her weapon.

03:51:59 15 Notice I'm tapping the enemies that -- Shelly is

03:52:03 16 not firing at those enemies necessarily. The way the game

03:52:06 17 works is that Shelly will automatically fire at the enemy

03:52:09 18 that's closest.

03:52:10 19 Q. So -- so you tapped on the screen. When you tapped on

03:52:13 20 the right side, and did a cone appear?

03:52:15 21 A. No, no cone appeared when you simply tap.

03:52:18 22 Q. What's the significance of that?

03:52:19 23 A. There is no appearance of what Dr. Akl argues is the

03:52:24 24 frame.

03:52:24 25 Q. Okay.

03:52:30 1 MR. SACKSTEDER: Okay. Let's go to the next part  
03:52:32 2 of the video. All right. Let's play it.

03:52:33 3 A. So here I'm going to show how the aiming works, and  
03:52:36 4 notice that I'm -- I'm swiping. I'm holding and swiping.  
03:52:41 5 And then at that moment, the cone appears from the  
03:52:43 6 character. I'm to perform that same motion on different  
03:52:46 7 parts of the right side of the screen. And you will notice  
03:52:49 8 that the cone is always in the same location.

03:52:53 9 Q. (By Mr. Sacksteder) So when you swipe, you first touch  
03:52:55 10 the screen and then slide; is that correct?

03:52:59 11 A. Yes, you touch and then slide.

03:53:01 12 Q. Okay. And if you just touched and did not slide, would  
03:53:04 13 you see the cone?

03:53:05 14 A. No.

03:53:05 15 Q. And what were you trying to show through these videos?

03:53:12 16 A. So regardless of the position of the action I'm doing  
03:53:16 17 on the screen, on the right side, if I hit the top of the  
03:53:19 18 screen, the bottom of the screen, the cone is always in the  
03:53:22 19 same position. The position of the cone does not change.

03:53:24 20 Q. All right. Let's connect your analysis to the claim  
03:53:27 21 language?

03:53:27 22 MR. SACKSTEDER: Can we go to the next slide,  
03:53:29 23 please?

03:53:29 24 Q. (By Mr. Sacksteder) All right. And what is your  
03:53:35 25 conclusion based on this claim element as to whether Brawl

03:53:38 1 Stars infringes?

03:53:38 2 A. So the -- the frame indicative of shooter -- a frame --  
03:53:42 3 my apologies. A frame indicative of a shooting effective  
03:53:46 4 range in response to and based on the position of the first  
03:53:49 5 touch operation does not appear in Brawl Stars because the  
03:53:52 6 appearance of the frame is not based on the position of the  
03:53:56 7 touch operation.

03:53:57 8 Q. And the position of the touch operation specifically  
03:54:00 9 that Dr. Akl alleged?

03:54:01 10 A. Uh-huh, yes.

03:54:02 11 Q. And what is that that he alleges?

03:54:05 12 A. So in Dr. Akl's testimony, he explained that once the  
03:54:10 13 cone is already visible, you can continue to swipe. And  
03:54:14 14 when you swipe, the cone rotates.

03:54:17 15 Q. And --

03:54:18 16 A. That is a different operation in this case -- different  
03:54:21 17 type of motion. It's a difference in orientation, not a  
03:54:26 18 difference in position.

03:54:27 19 Q. And why do you believe that position and orientation  
03:54:32 20 are two different things?

03:54:33 21 A. So in computer science, these are two different  
03:54:37 22 concepts. The position refers to the location on the  
03:54:39 23 screen of a graphic element. And the orientation refers to  
03:54:44 24 whether or not it's been rotated around a certain axis, for  
03:54:48 25 example.

03:54:48 1 Q. Do you have any other reasons why this element is not  
03:54:54 2 infringed?

03:54:55 3 A. Yes. So Dr. Akl's testimony was that -- and here I  
03:55:03 4 was -- I was a bit confused, to be honest, because early in  
03:55:06 5 his testimony he indicated that when you touch the screen  
03:55:09 6 and the red button appears, that was the first touch  
03:55:11 7 operation.

03:55:11 8 But later on he said that when you touch the  
03:55:14 9 screen and then swipe on the screen, that that was the  
03:55:17 10 first touch operation. And then you could move the cone  
03:55:19 11 around. And that would be a third touch operation. So I  
03:55:23 12 started to lose track of which touch operation was what.

03:55:27 13 I believe that Dr. Akl is sort of combining two  
03:55:30 14 different operations into one. A touch and then a slide  
03:55:34 15 he's calling one operation, when I think it's incorrect to  
03:55:37 16 do that.

03:55:38 17 Q. Did you hear him testify that those are basically --  
03:55:40 18 those two things are basically one thing?

03:55:42 19 A. That was my understanding.

03:55:44 20 Q. Do you agree with that?

03:55:44 21 A. No, I disagree.

03:55:45 22 Q. Why not?

03:55:46 23 A. That's not standard terminology within the world of --  
03:55:51 24 development of apps for -- apps and games for touchscreen  
03:55:55 25 devices.

03:55:55 1 Q. And do you have anything that shows that?

03:55:56 2 A. Yes, I do.

03:55:57 3 Q. All right.

03:55:58 4 MR. SACKSTEDER: Can we go to the next slide?

03:56:00 5 Q. (By Mr. Sacksteder) All right. Can you explain your  
03:56:01 6 opinion just based on this demonstrative?

03:56:02 7 A. Yes. So this is from the Apple computer -- Apple.com  
03:56:09 8 support website. And here they're kind of explaining what  
03:56:13 9 some of the basic gestures are that you can do with an  
03:56:17 10 iPad.

03:56:17 11 The one on the top there, it's a single little  
03:56:20 12 green dot, it says: Tap. The next one is: Touch and  
03:56:20 13 hold. So that's when you put your finger on the screen and  
03:56:23 14 leave it there. There's swipe and so on. They don't have  
03:56:25 15 an element that is tap plus swipe. You know, that tap and  
03:56:29 16 swipe are two distinct operations.

03:56:31 17 Q. Okay.

03:56:32 18 MR. SACKSTEDER: Can we go back a couple of slides  
03:56:34 19 to the claim language?

03:56:36 20 Q. (By Mr. Sacksteder) So the languages that you're  
03:56:39 21 talking about is identify a first touch operation, and then  
03:56:41 22 display a frame indicative of a shooting effective range in  
03:56:46 23 accordance with a position of the first touch operation; is  
03:56:48 24 that correct?

03:56:48 25 A. Correct.

03:56:49 1 Q. All right. And -- and so is it -- what is it in Brawl  
03:56:57 2 Stars that causes the cone to be displayed?

03:57:01 3 A. So the cone appears on a second -- on a second  
03:57:04 4 operation. So you put your finger on the screen, no cone  
03:57:08 5 appears, and then as soon as you slide it, that's when the  
03:57:10 6 cone appears.

03:57:11 7 Q. What's your overall opinion about infringement by Brawl  
03:57:16 8 Stars?

03:57:16 9 A. It does not infringe.

03:57:19 10 Q. You also analyzed the '655 patent?

03:57:23 11 A. That is correct.

03:57:24 12 Q. All right. And we're looking at that now?

03:57:26 13 A. Yes.

03:57:27 14 Q. All right. And the Japanese filing date is in the  
03:57:31 15 bottom right-hand corner, correct?

03:57:33 16 A. Correct.

03:57:33 17 Q. Can you tell the jury, just sort of generally, what it  
03:57:37 18 is that the '655 patent is directed to?

03:57:40 19 A. So the '655 patent is directed towards games -- games,  
03:57:47 20 in particular, where gifting is a feature. And the idea is  
03:57:51 21 to incentivize people to give gifts to other people in the  
03:57:55 22 game.

03:57:55 23 And so the patent basically explains a method -- a  
03:57:59 24 way to incentivize that. And the idea is to give a bonus  
03:58:03 25 or benefit to the person who receives the gift. So rather



03:58:07 1 than incentivizing the person giving the gift, you  
03:58:10 2 incentivize the person receiving the gift.

03:58:14 3 MR. SACKSTEDER: Can we look at the next slide,  
03:58:15 4 Mr. Smith?

03:58:16 5 Q. (By Mr. Sacksteder) Does that describe one way of  
03:58:23 6 gifting?

03:58:23 7 A. Yes. So this is from the patent itself, the inventions  
03:58:26 8 of the patent explaining that it is conventional to want to  
03:58:33 9 incentivize people giving gifts. That was sort of  
03:58:36 10 well-known and well-understood at the time, and to give an  
03:58:40 11 example of a conventional way to do that.

03:58:41 12 Q. And does the patent have a graphical representation of  
03:58:47 13 how that's done?

03:58:48 14 A. Yes, I believe there's a flowchart to Figure 7B, if I  
03:58:51 15 recall.

03:58:56 16 MR. SACKSTEDER: Can we call that up, Mr. Smith?

03:58:59 17 Q. (By Mr. Sacksteder) Can you walk the jury through the  
03:59:01 18 flowchart?

03:59:02 19 A. Sure. So it's a pretty straight-forward process. The  
03:59:06 20 first couple elements have to do with the item that's being  
03:59:10 21 gifted, but I want to focus on the diamond at the bottom.

03:59:13 22 This is Element S715, that says: Condition for  
03:59:16 23 granting item satisfied? And, again, this is a decision  
03:59:21 24 point, and you see is a condition -- has a condition been  
03:59:24 25 satisfied? The possible answers being yes or no. And if

03:59:28 1 the answer is yes, you would then move on to grant an item.

03:59:32 2 Q. You mentioned the yes and no. What -- is there a name  
03:59:36 3 for that type of process where you have the decision point  
03:59:39 4 and different branches for yes and no?

03:59:41 5 A. Yes. In computer programming this is often referred to  
03:59:47 6 as an if/then type of structure.

03:59:50 7 Q. And what's the significance of that?

03:59:51 8 A. It is that -- the condition is supposed to be the if.  
03:59:52 9 So if a certain thing happens to be true, then you must do  
03:59:56 10 whatever follows. So there's a requirement that the  
04:00:00 11 result, if the condition is satisfied, must happen.

04:00:02 12 Q. What does Dr. Akl accuse of infringing the '655 patent?

04:00:07 13 A. The card donation system in -- in Clash Royale.

04:00:12 14 Q. Do you agree with Dr. Akl?

04:00:16 15 A. I do not agree with him.

04:00:19 16 Q. Is the portion of the claim chart -- the flowchart that  
04:00:24 17 you just showed, is that consistent with your understanding  
04:00:26 18 of how Clash Royale works?

04:00:27 19 A. No, this is not -- the flowchart does not show how Clash  
04:00:32 20 Royale works.

04:00:32 21 MR. SACKSTEDER: Let's look at the next slide with  
04:00:37 22 the claim language.

04:00:48 23 Q. (By Mr. Sacksteder) You have some highlighted language  
04:00:49 24 again in Claims 1 and 7 of the '655 patent, correct?

04:00:51 25 A. Yes.

04:00:52 1 Q. What is the significance of the highlighting?

04:00:54 2 A. So these sections basically describe how the -- the  
04:00:57 3 process of selecting the gift that is to be sent should be  
04:00:59 4 handled.

04:01:01 5 The idea is that the user, who is going to give  
04:01:03 6 the gift on their device, they need to receive display  
04:01:07 7 data. That's sort of the information such that their  
04:01:10 8 device can show to the person who is giving the gift what  
04:01:14 9 gifts they have available to provide so that they can make  
04:01:18 10 a selection.

04:01:19 11 Also, they need to be able to see the information,  
04:01:21 12 such that they can choose who they want to send the gift to  
04:01:25 13 amongst all the possible people they have available to give  
04:01:28 14 a gift.

04:01:28 15 Q. There's a first user and a second user in this claim?

04:01:34 16 A. Yes.

04:01:34 17 Q. Which one gives the gift?

04:01:36 18 A. The first user.

04:01:37 19 Q. Which one receives the gift?

04:01:41 20 A. The second user is the one who receives the gift.

04:01:41 21 Q. Does Clash Royale satisfy or use this claim element?

04:01:44 22 A. No, it does not.

04:01:44 23 Q. Do you have any videos that will help us explain how --  
04:01:47 24 how Clash Royale does not practice this?

04:01:49 25 A. Yes, I do.

04:01:50 1 Q. All right. Can we take a look at the first one,  
04:01:56 2 please?

04:01:56 3 A. So this video -- so the donation system starts with a  
04:02:00 4 person who wants to receive the gift.

04:02:02 5 MR. SACKSTEDER: Can we pause right there?

04:02:04 6 Q. (By Mr. Sacksteder) What are we looking at here,  
04:02:05 7 Dr. Zagal?

04:02:06 8 A. So, here, I'm the one who -- I'm playing the game in  
04:02:10 9 this video, and I decided that I would like a friend of  
04:02:13 10 mine -- a clan mate to send me a card. I'm requesting a  
04:02:17 11 card that I'd like to receive as a gift.

04:02:20 12 MR. SACKSTEDER: Can we go back to the screen  
04:02:21 13 where we were? Right there.

04:02:23 14 Q. (By Mr. Sacksteder) And -- and so who -- who is -- who  
04:02:29 15 is interacting with this screen?

04:02:31 16 A. So myself. So Jose Zagal is interacting in the context  
04:02:35 17 of the patent, this would be sort of User 2 or the person  
04:02:39 18 who receives the gift.

04:02:40 19 Q. All right. The second user?

04:02:42 20 A. The second user, exactly.

04:02:43 21 Q. So let's -- what is the second user doing, what is the  
04:02:48 22 person who's going to receive the gift doing interacting  
04:02:52 23 with this screen?

04:02:53 24 A. So what I'm going to do is I'm going to tap on the card  
04:02:55 25 and select the card that I would like to receive, and

04:02:57 1 you'll notice that there are several cards on the screen.

04:02:59 2 These are all the different options I have available to me.

04:03:02 3 I can pick the skeletons or pick that sort of snowball.

04:03:06 4 I'm the one that does the choosing of the card I'd like to

04:03:10 5 get.

04:03:10 6 Q. Let's go through if we could and you can explain what's

04:03:13 7 happening?

04:03:13 8 A. Also up top, this page is called select card to

04:03:17 9 request, and the tab that's active is the request tab.

04:03:21 10 Q. So what has happened there? I just saw -- saw

04:03:25 11 something --

04:03:25 12 A. When I first tapped on the skeletons and then I changed

04:03:28 13 my mind and decided, no, I'd like the goblins that were

04:03:33 14 next to that; those are the ones I'd really like to

04:03:36 15 request. I tap on the request button.

04:03:38 16 Q. Then what happens?

04:03:39 17 A. Then I go back to the screen -- a screen that shows all

04:03:43 18 the current requests that are active in my clan.

04:03:46 19 Q. So this is -- now we're at a different -- are we a

04:03:49 20 different user here, or are we still you?

04:03:51 21 A. This is a different video. This is now User 1, as it

04:03:56 22 were. I'm still the one who's playing the game in this

04:04:00 23 case, and I'm a person who wants to give a gift to someone

04:04:03 24 else, so I'm User 1 in this case.

04:04:05 25 And what I do is on this screen, I will see a list

04:04:08 1 of all the people in my clan who have asked for a card. I  
04:04:12 2 can scroll through this list, and I can select who I want  
04:04:16 3 to give the card to.

04:04:17 4 Q. And then what happens to -- what happens -- so in that  
04:04:22 5 context, are you the giving user or the receiving user?

04:04:27 6 A. Here I'm the giving user.

04:04:28 7 Q. Okay. Got it. And is that a good place to talk about  
04:04:35 8 what the giving user can and cannot select?

04:04:37 9 A. Yes. So this is actually one of the parts that shows  
04:04:42 10 that -- that Clash Royale does not meet the claim.

04:04:48 11 Q. Okay. Can you walk through that and explain why not?

04:04:51 12 A. Uh-huh.

04:04:56 13 Q. And I apologize for looping back, but if you could when  
04:05:00 14 we get there --

04:05:01 15 THE WITNESS: If you could pause the video there.

04:05:03 16 THE COURT: And also, Dr. Zagal, "uh-huh" is not  
04:05:05 17 going to be a proper answer on the record. You'll need to  
04:05:08 18 say yes or no. Give a verbalized answer, please.

04:05:13 19 THE WITNESS: Understood.

04:05:14 20 THE COURT: Thank you.

04:05:15 21 Q. (By Mr. Sacksteder) Okay. What are we looking at now,  
04:05:17 22 Dr. Zagal?

04:05:18 23 A. So, in this case, I'm looking at all the requests that  
04:05:21 24 have been made by people in my clan. You'll notice that  
04:05:24 25 the request on the top is the request that I made, and it's

04:05:27 1 all grayed out. So in Clash Royale you are not allowed to  
04:05:30 2 donate a card to yourself.

04:05:31 3 We can see there's a user Jessica, who is  
04:05:35 4 requesting cards. And so I would tap on the donate button.  
04:05:38 5 And at that moment, I would send her the card that she has  
04:05:41 6 requested.

04:05:43 7 Q. Okay. And do you have any choice on which card you're  
04:05:47 8 going to give to the User Jessica?

04:05:50 9 A. No, you have no choice on the card because the card has  
04:05:54 10 already been selected by the person who receives the card.

04:05:57 11 Q. So all you can do is select to give a card that Jessica  
04:06:01 12 has already asked for; is that correct?

04:06:02 13 A. Correct.

04:06:03 14 MR. SACKSTEDER: Let's go to the slide -- the next  
04:06:06 15 slide. That one.

04:06:11 16 Q. (By Mr. Sacksteder) Again, in Clash Royale which user  
04:06:13 17 of the first and second user, as they're used in the claim,  
04:06:16 18 actually selects the card to be transferred?

04:06:18 19 A. So, in Clash Royale, it is the second user who selects  
04:06:22 20 the card to -- to be transferred. They select the gift  
04:06:25 21 they would like to receive.

04:06:26 22 Q. And in the '655 patent, which user is required by the  
04:06:32 23 claims to do the selecting of an object?

04:06:36 24 A. The claims require that it is the first user, the  
04:06:39 25 person who is giving the gift, do two things: Select what

04:06:44 1 gift they would like to give and also select who they'd  
04:06:48 2 like to give that gift to.

04:06:50 3 Q. In Clash Royale, is there any way for the giving user  
04:06:52 4 to select among multiple gifts to give to one person?

04:06:55 5 A. No, it is impossible. You're only allowed to select  
04:06:59 6 one -- you're only allowed to request one card at a time.

04:07:03 7 So you can't have multiple requests open, as it were. You  
04:07:06 8 can only have one card at a time.

04:07:09 9 Q. What if a person, another player, has -- has requested  
04:07:11 10 a card? Could the giving user pick another card to give  
04:07:17 11 instead?

04:07:18 12 A. No. It is actually impossible to send someone a card  
04:07:23 13 if they have not requested a card first. There's no -- no  
04:07:26 14 way to be generous and just send cards out for free. They  
04:07:29 15 have to ask for them first.

04:07:31 16 Q. Were you in the courtroom when Dr. Akl testified about  
04:07:33 17 this claim element?

04:07:34 18 A. Yes, I was.

04:07:35 19 Q. And what was Dr. Akl's explanation of why this -- why  
04:07:40 20 he thinks this limitation, this element is met?

04:07:43 21 A. So he said a couple of things. One thing he said, this  
04:07:47 22 is like a wish list, and just because it was a wish list or  
04:07:51 23 intent of -- on the part of the person who receives the  
04:07:53 24 card, that that didn't matter.

04:07:55 25 But I think he was ignoring the fact I might have



04:07:59 1 a wish list -- let's say on Amazon, for example -- but  
04:08:03 2 people can still send me things that are not on my wish  
04:08:07 3 list. And that possibility, that functionality is not  
04:08:09 4 possible in this game. No one can send me anything if I  
04:08:12 5 have not requested it previously.

04:08:13 6 I think Dr. Akl also argued that when you select  
04:08:18 7 to donate the card, you are selecting both things at the  
04:08:21 8 same time. So when I say I'm going to send a card to  
04:08:25 9 Jessica and I tap on that donate button, I have selected  
04:08:28 10 both the card and the person, and I believe that is  
04:08:30 11 incorrect.

04:08:30 12 Q. Why?

04:08:30 13 A. The claim language is actually pretty clear on the  
04:08:33 14 matter. So it says: Selecting a first object from the  
04:08:38 15 possessed objects. Plural with an S. So this means you  
04:08:42 16 need to pick one from more than one.

04:08:44 17 And then for the users it says: Selecting a  
04:08:49 18 second user from a plurality -- plurality of users. Also  
04:08:53 19 with an S, also plural, indicating more than one user.

04:08:56 20 Q. So what is your conclusion about whether this claim  
04:09:05 21 element is used by Clash Royale?

04:09:07 22 A. It is not used.

04:09:15 23 MR. SACKSTEDER: Let's move to the next slide,  
04:09:17 24 please, Mr. Smith.

04:09:18 25 Q. (By Mr. Sacksteder) What are we looking at on the

04:09:20 1 slide now?

04:09:21 2 A. So looking at a later section in Claims 1 and 7, and  
04:09:25 3 these sections basically relate to two things. The idea  
04:09:29 4 that the transfer information needs to be connected somehow  
04:09:33 5 to a condition, the condition being evaluated to determine  
04:09:36 6 whether or not a second object is granted, and that the --  
04:09:42 7 the -- the object -- the second object, in this case, the  
04:09:46 8 bonus object, has to be granted if that condition is being  
04:09:49 9 met.

04:09:50 10 Q. And, in your opinion, does Clash Royale use these claim  
04:09:54 11 elements?

04:09:54 12 A. No, it does not.

04:09:56 13 Q. Why not?

04:09:58 14 A. For a couple of reasons. I have four of them up here  
04:10:02 15 on the slide.

04:10:03 16 Q. Can you start with the first one?

04:10:05 17 A. Sure. So the first one is a person who receives the  
04:10:08 18 gift. This is the second user. You only get one card at a  
04:10:11 19 time. As a part of this donating process, that's all you  
04:10:14 20 receive in terms of objects in the game. You get one card.

04:10:17 21 Q. Do you have a video that illustrates this?

04:10:20 22 A. Yes, sir I do.

04:10:21 23 Q. No, wait, we're -- we're not going to play that video.

04:10:27 24 MR. SACKSTEDER: So can we move to Slide 40,  
04:10:29 25 please, or move to the next slide beyond the -- the -- two

04:10:39 1 slides in. There you go.

04:10:40 2 Q. (By Mr. Sacksteder) Okay. So is -- is it your opinion  
04:10:42 3 that for the reason you just discussed whether -- do you  
04:10:44 4 have an opinion whether Clash Royale practices or uses  
04:10:47 5 these claim elements?

04:10:48 6 A. It does not practice.

04:10:51 7 MR. SACKSTEDER: Can we go back to the slide that  
04:10:53 8 had the reasons for non-infringement?

04:10:55 9 Q. (By Mr. Sacksteder) So what is the -- what's the next  
04:10:57 10 reason, in your opinion?

04:10:58 11 A. So Dr. Akl argued that this possible second object was  
04:11:06 12 an upgraded card and that when you receive a card, there's  
04:11:13 13 a possibility that the meter of that card is full. Thus,  
04:11:19 14 then the meter turns a different color, and you might be  
04:11:22 15 able to upgrade a card.

04:11:24 16 MR. SACKSTEDER: Can we look at DX-532, please?

04:11:28 17 Q. (By Mr. Sacksteder) And this is a video?

04:11:30 18 A. Yes.

04:11:33 19 Q. All right. Can we see what that shows?

04:11:35 20 A. So in this video, I'm going to try to upgrade the card.  
04:11:38 21 I'm going to fail because I don't have enough gold. I'm  
04:11:42 22 going to try to upgrade that card. It says I need 2000  
04:11:46 23 gold and I only have 1592.

04:11:48 24 When I press on the upgrade button down at the  
04:11:51 25 bottom, I get a message saying, not enough gold. And it's

04:11:55 1 asking me if I want to buy more gold at that point.

04:11:57 2 Q. And how is this different from what is claimed and  
04:12:00 3 described in the '655 patent?

04:12:00 4 A. So Dr. Akl argued that the condition that was related  
04:12:05 5 to the gift was this meter becoming full. If that  
04:12:09 6 condition is met, according to the claim, then I must  
04:12:12 7 receive the second object.

04:12:13 8 But, in this case, you can see that despite this  
04:12:16 9 meter being full -- and let's imagine it became full thanks  
04:12:21 10 to having received the card as a gift -- I was not able to  
04:12:25 11 upgrade the card in this case because I did not have enough  
04:12:27 12 gold.

04:12:28 13 Q. Why doesn't the ability to upgrade, if you pay the gold  
04:12:32 14 later on, satisfy the claim?

04:12:34 15 A. So ability is not an object, and the claim requires an  
04:12:40 16 object.

04:12:40 17 MR. SACKSTEDER: Can we go also to Figure 7b,  
04:12:43 18 again, from the '655 patent, and that same part down at the  
04:12:53 19 bottom we looked at before?

04:12:54 20 Q. (By Mr. Sacksteder) That refers to a condition,  
04:12:55 21 correct, Doctor?

04:12:56 22 A. Yes.

04:12:56 23 Q. All right. And what's the significance of that -- I  
04:12:59 24 think you called it an if/then situation?

04:13:01 25 A. Yes, it's an if/then. The arrow coming out of the

04:13:05 1 bottom of the diamond says, yes, not maybe. So the yes  
04:13:09 2 means that it is actually required. This thing has to  
04:13:12 3 happen.

04:13:13 4 Q. Thank you, Doctor.

04:13:14 5 MR. SACKSTEDER: Can we go back to the slide with  
04:13:17 6 the reasons for non-infringement -- well, let's -- let's go  
04:13:20 7 to this one first.

04:13:21 8 Q. (By Mr. Sacksteder) What is the impact of what you  
04:13:23 9 have just described on whether the Claim Elements 1f and 7f  
04:13:28 10 is practiced or used by Clash Royale?

04:13:30 11 A. Not met.

04:13:36 12 MR. SACKSTEDER: Okay. Back to the slide. If you  
04:13:38 13 can go -- skip that one. And let's just go to the next  
04:13:42 14 slide -- next slide. Thank you.

04:13:49 15 Q. (By Mr. Sacksteder) Okay. What's the final point that  
04:13:51 16 we've just skipped to?

04:13:52 17 A. So this one says an upgraded card is not a second  
04:13:57 18 object.

04:13:57 19 MR. SACKSTEDER: And can we go to the claim  
04:13:59 20 language there, and can you explain what part of the claim  
04:14:05 21 we're talking about now?

04:14:06 22 A. Yeah. So, basically, the claim says: If the condition  
04:14:09 23 is met, then the user must receive a second object.

04:14:15 24 Dr. Akl argues that -- and let's imagine that he  
04:14:18 25 was correct -- I believe he is not correct -- that this

04:14:21 1 upgraded card is the second object. I believe he is -- he  
04:14:29 2 is incorrect when he says that.

04:14:31 3 Q. Did you look at the source code for Clash Royale in  
04:14:34 4 performing your analysis?

04:14:35 5 A. I did.

04:14:35 6 Q. All right. And did you also speak to developers of  
04:14:41 7 Clash Royale?

04:14:41 8 A. I did.

04:14:42 9 Q. All right. And what did you learn about whether an  
04:14:46 10 upgraded card is a second object?

04:14:51 11 A. So in terms of the source code, what happens behind the  
04:14:57 12 scenes here is that the user has, say, a list of all the  
04:14:59 13 cards that they -- that they own. And when you upgrade a  
04:15:00 14 card, there is no card being eliminated and a -- and a new  
04:15:04 15 card being added.

04:15:05 16 What happens, instead, is that the attributes, as  
04:15:09 17 it were, of the card that they already have are modified.  
04:15:12 18 So the level is increased by 1, for example.

04:15:14 19 Q. So what does that mean as to whether it's the same card  
04:15:17 20 or a different card?

04:15:18 21 A. It's the same card.

04:15:19 22 Q. Did you hear Dr. Akl -- and I think you mentioned this  
04:15:26 23 briefly -- offer an opinion that the ability to upgrade is  
04:15:30 24 an -- is an item that could be an item received in the  
04:15:33 25 claim?

04:15:33 1 A. Yes. I also heard him use an -- an analogy, too.

04:15:37 2 Q. Is the ability to upgrade a second object, as that's  
04:15:42 3 used in the claim?

04:15:43 4 A. No, it's an ability, not an object.

04:15:46 5 Q. Did you look at Claim 5 of the -- of the '655 patent,  
04:15:52 6 as well?

04:15:53 7 A. Yes.

04:15:54 8 Q. All right. And Claim 5 is a dependent claim from Claim  
04:15:57 9 1; is that correct?

04:15:58 10 A. That is correct.

04:15:59 11 Q. Do you have an opinion about whether Claim 5 is  
04:16:03 12 infringed?

04:16:03 13 A. No, it is not infringed.

04:16:05 14 Q. All right. And it says there the server according to  
04:16:07 15 Claim 1. Do you see that?

04:16:09 16 A. Yes.

04:16:09 17 Q. What is your understanding of what the elements of  
04:16:13 18 Claim 5 are, in addition to what's actually there in  
04:16:17 19 Claim 5?

04:16:18 20 A. So in order to determine if Claim 5 is infringed,  
04:16:22 21 because it is a dependent claim on Claim 1, we also need to  
04:16:26 22 look at all the elements of Claim 1. So it needs to meet  
04:16:29 23 everything in Claim 1 and Claim 5.

04:16:32 24 Q. All right. So what is your ultimate opinion about  
04:16:36 25 Claim 5?

04:16:39 1 A. It is not infringed.

04:16:40 2 Q. Okay. Thank you, sir.

04:16:41 3 Do you also have opinions regarding invalidity of  
04:16:43 4 the '873 patent?

04:16:48 5 A. I do.

04:16:48 6 Q. What analysis do you perform to determine whether a  
04:16:52 7 patent is valid or not?

04:16:53 8 A. So it's slightly different than infringement. For  
04:16:58 9 infringement, I looked at the claims and then at the game  
04:17:01 10 or the -- or the software that is alleged to infringe.

04:17:06 11 For invalidity, I basically need to look at the  
04:17:10 12 claims and then compare them to what is called prior art.

04:17:12 13 Q. What is prior art?

04:17:14 14 A. Prior art is -- my understanding, it's a legal term  
04:17:17 15 that refers to published materials, the nature such as  
04:17:21 16 videos, books, articles.

04:17:22 17 Q. And what date did you use to determine whether  
04:17:28 18 something was prior art or not?

04:17:29 19 A. So for the '873 patent, which is the one on the screen  
04:17:32 20 right now, I used the February 26th, 2013. So prior art in  
04:17:37 21 this case would mean anything that was published prior to  
04:17:40 22 February 26th of 2013.

04:17:42 23 Q. Could a game be prior art?

04:17:44 24 A. Yes.

04:17:44 25 Q. Could a video showing a game, if it also shows the



04:17:49 1 elements of the claim, be prior art?

04:17:50 2 A. Yes.

04:17:50 3 Q. And could a manual be a prior art?

04:17:53 4 A. Yes.

04:17:53 5 Q. And could a book about a game, if it has the right  
04:17:57 6 disclosure, be prior art?

04:17:59 7 A. Yes.

04:17:59 8 Q. If they're before this date, correct?

04:18:04 9 A. Correct.

04:18:06 10 MR. SACKSTEDER: Let's go to the next slide.

04:18:07 11 Q. (By Mr. Sacksteder) And if you can remind the jury  
04:18:10 12 what the '873 patent is generally about?

04:18:12 13 A. So the '873 patent is the aiming and shooting and the  
04:18:18 14 two-step process on a touchscreen device, and there --  
04:18:20 15 there's a server, as well.

04:18:22 16 Q. Were there shooting games that didn't use touchscreen  
04:18:26 17 devices before all this touchscreen business started?

04:18:30 18 A. There's been shooting games, I think, as -- for as long  
04:18:34 19 as there's been video games.

04:18:36 20 MR. SACKSTEDER: Can we look at the next slide,  
04:18:38 21 Mr. Smith?

04:18:38 22 Q. (By Mr. Sacksteder) All right. What are we looking at  
04:18:40 23 here?

04:18:40 24 A. So these are screenshots from a game called  
04:18:45 25 Counterstrike. The game was released in 1999. I played it

04:18:48 1 probably too much back in the day. Along the top, I want  
04:18:50 2 to draw your attention to what's happening.

04:18:52 3 So the screenshot on the left shows a player.  
04:18:57 4 They are holding a weapon, and they're kind of looking at  
04:19:00 5 the world. The screenshot in the middle shows them in a  
04:19:03 6 scoped mode. So they're sort of zoomed in and they're sort  
04:19:07 7 of looking through the scope of the weapon that they're  
04:19:09 8 holding. And in the third screenshot they have fired the  
04:19:12 9 weapon and have sort of killed an enemy, who is sort of far  
04:19:16 10 away.

04:19:17 11 Q. And what do we see down at the bottom of the screen  
04:19:19 12 there?

04:19:19 13 A. On the bottom we see a typical mouse controller with  
04:19:24 14 two buttons, a left button and a right button. And so the  
04:19:26 15 standard control scheme -- the standard way to operate  
04:19:29 16 these kinds of games versus shooters in general was to  
04:19:30 17 first click -- to click on the right mouse button to enter  
04:19:35 18 sort of scope mode, and then you would click on the left  
04:19:38 19 mouse button to fire your weapon.

04:19:40 20 Q. All right. And there was no touchscreen for this game?

04:19:42 21 A. Not for Counterstrike, no.

04:19:46 22 Q. All right.

04:19:46 23 MR. SACKSTEDER: Can we go to the next slide,  
04:19:48 24 please?

04:19:48 25 Q. (By Mr. Sacksteder) And can you just walk us through

04:19:50 1 sort of generally what we're looking at here, the -- the --  
04:19:53 2 the timing?

04:19:54 3 A. Sure. So on the far right there, we see the -- the  
04:19:57 4 patent date, February 26, 2013. Along the bottom, I  
04:20:01 5 thought I would highlight some devices that we use for  
04:20:04 6 gaming or continue to use for gaming that involve  
04:20:07 7 touchscreens.

04:20:07 8 The earliest one here is the PalmPilot that came  
04:20:11 9 out in 1996. I used to have one of these and played games  
04:20:14 10 on it.

04:20:15 11 2004, we saw Nintendo released a console called  
04:20:20 12 Nintendo DS. It was a handheld device. The second  
04:20:21 13 screen -- the lower screen on the DS was a touchscreen.  
04:20:23 14 You could interact with it with your finger or your stylus.

04:20:27 15 2007 saw the release of the iPhone.

04:20:30 16 On the top, there are some examples of -- of games  
04:20:32 17 that had a two-step aim and fire process. And, for  
04:20:37 18 example, there's a Warhammer game. That's a game that I  
04:20:42 19 played back in the day. This game you could also -- you  
04:20:45 20 could control it with the DS touchscreen.

04:20:49 21 And there's also a whole lunch of games --  
04:20:52 22 shooting games available also on the iPhone. There's a  
04:20:53 23 couple of examples there.

04:20:53 24 Q. All right. And there are a couple of other games that  
04:20:55 25 you're going to dis -- discuss more in detail about

04:20:59 1 invalidity, correct?

04:20:59 2 A. Yes.

04:20:59 3 Q. All right. What's your opinion about whether the  
04:21:02 4 asserted claims of the '873 patent are valid?

04:21:05 5 A. I believe the patent is invalid.

04:21:07 6 Q. What are the requirements for a patent to be valid in  
04:21:12 7 general terms?

04:21:12 8 A. So the prior art needs to show, demonstrate, disclose  
04:21:17 9 all the elements of the claim, every single one.

04:21:21 10 Q. And can that be in combination with two different prior  
04:21:24 11 art references sometimes?

04:21:24 12 A. Yes. You can have two -- two elements of prior art  
04:21:31 13 where let's say one meets half and the other one meets the  
04:21:34 14 other half. But then you also need to demonstrate there  
04:21:36 15 was a reason to want to combine.

04:21:37 16 Q. And what is the result there called?

04:21:40 17 A. So there's an obviousness.

04:21:46 18 Q. All right. And did you hear Mr. Friedman's testimony?

04:21:49 19 A. Yes.

04:21:49 20 Q. And he also talked about anticipation?

04:21:53 21 A. Yes.

04:21:54 22 Q. Did you analyze both of those?

04:21:55 23 A. Yes.

04:21:56 24 Q. So what's your general conclusion about the '873  
04:22:03 25 patent?

04:22:03 1 A. Not valid.

04:22:04 2 MR. SACKSTEDER: Can we go to the next slide,  
04:22:09 3 please?

04:22:09 4 Q. (By Mr. Sacksteder) What games and videos, describing  
04:22:14 5 them in your mind and in your opinion, render the '873  
04:22:20 6 asserted claims invalid?

04:22:22 7 A. Call of Mini Sniper and a video that shows Call of Mini  
04:22:26 8 Sniper. And Sniper vs. Sniper: Online and the video  
04:22:31 9 that -- that shows it.

04:22:33 10 Q. And how are these described in the -- sort of what  
04:22:38 11 medium is used for their description in your analysis?

04:22:42 12 A. So these are -- are both games. They are shooter  
04:22:47 13 games. They are played on mobile devices with  
04:22:50 14 touchscreens.

04:22:51 15 Q. All right. And did you analyze any publication  
04:22:53 16 regarding them?

04:22:53 17 A. Yes.

04:22:54 18 Q. All right. What -- what kind of publication?

04:22:57 19 A. Videos.

04:22:57 20 Q. And where were those videos found?

04:23:00 21 A. On YouTube.

04:23:04 22 Q. What is YouTube?

04:23:04 23 A. YouTube is a website that is used to host videos, and a  
04:23:09 24 lot of people also use it to watch videos.

04:23:12 25 Q. And do the YouTube videos that you analyzed by

04:23:17 1 themselves invalidate the patent?

04:23:19 2 A. Yes.

04:23:19 3 Q. And do you have an understanding as to whether the  
04:23:23 4 games that are described in the videos also invalidate the  
04:23:27 5 asserted claims?

04:23:28 6 A. Yes.

04:23:29 7 Q. All right. And what are your opinions there?

04:23:31 8 A. They invalidate.

04:23:33 9 Q. All right.

04:23:38 10 MR. SACKSTEDER: Let's go to the next slide.

04:23:40 11 Q. (By Mr. Sacksteder) And what do we have here,  
04:23:44 12 Dr. Zagal?

04:23:44 13 A. So this -- this is some material. It sort of shows  
04:23:50 14 what Call of Mini Sniper was about. It's a game where you  
04:23:53 15 play as a sheriff, and you have a sniper rifle. There's  
04:23:59 16 been a Zombie outbreak. You need to shoot all the Zombies  
04:24:04 17 before they get to the humans.

04:24:05 18 Q. What was Call of Mini Sniper -- where was it played,  
04:24:08 19 where did you play it?

04:24:09 20 A. You can play it on an iPhone.

04:24:10 21 Q. And how would a person actually get the game on to  
04:24:13 22 their iPhone?

04:24:14 23 A. They would download it from the Apple App Store.

04:24:20 24 MR. SACKSTEDER: Let's play the video starting at  
04:24:22 25 the point identified, Mr. Smith. There we go.

04:24:28 1 Q. (By Mr. Sacksteder) What are we looking at, Doctor?

04:24:30 2 A. So the sheriff is the character that you're playing.

04:24:33 3 He has a sniper rifle. It was a free-to-play game. And

04:24:39 4 we'll -- we'll see how -- how the game is operated.

04:24:42 5 Q. So what -- what happened there?

04:24:43 6 A. So the player is instructed to tap on the screen in

04:24:48 7 order to zoom in on the scope. And then they're also

04:24:53 8 instructed to tap on the lower right side of the screen to

04:24:58 9 fire.

04:24:58 10 Q. And is this a YouTube video?

04:25:01 11 A. Yes.

04:25:01 12 MR. SACKSTEDER: Can we go back and just show that

04:25:03 13 again? Maybe we can hit the -- the taps -- not all the way

04:25:08 14 back. There we go. That's fine.

04:25:17 15 Q. (By Mr. Sacksteder) All right. And I know it's a

04:25:19 16 little difficult. Maybe we can pause when you ask us.

04:25:22 17 A. All right.

04:25:22 18 Q. So what happened there?

04:25:23 19 A. This is part of the tutorial of the game that explains

04:25:26 20 that you need to tap on a target to zoom. And what we'll

04:25:29 21 see next is the scope will come up and the image inside the

04:25:32 22 scope will correspond to where you touched on the screen.

04:25:34 23 Q. All right. And then what happens?

04:25:36 24 A. So here a player is also instructed that they can

04:25:39 25 optionally slide to adjust their aim.

04:25:41 1 Q. Okay. Then what happens?

04:25:42 2 A. And they notice down on the bottom right, there's a  
04:25:45 3 sort of button there with kind of like a star inside it.  
04:25:48 4 When you tap on that, the weapon fires, and the Zombie was  
04:25:52 5 killed.

04:25:52 6 Q. When was the Call of Mini game released?

04:25:56 7 A. Before the patent.

04:25:56 8 Q. Do you have a date?

04:25:58 9 A. I believe we have a slide.

04:26:00 10 Q. Oh, okay. There you go?

04:26:02 11 When was the Call of Mini game released?

04:26:07 12 A. March 2012.

04:26:08 13 Q. And how did you determine that?

04:26:10 14 A. Two different ways. You can go to the App Store, and  
04:26:13 15 the App Store has information that is publicly available  
04:26:18 16 letting you know when an app first made its appearance on  
04:26:22 17 the store.

04:26:23 18 There's also a website called Sensor -- Sensor  
04:26:23 19 Tower. And this is a service that sort of tracks apps.  
04:26:23 20 And you can go there, and it will, like, say when the app  
04:26:29 21 was made first available. And Sensor Tower also provides  
04:26:29 22 information on downloads.

04:26:33 23 So from Sensor Tower, we can also see that the  
04:26:34 24 game was available in the U.S. and had been downloaded in  
04:26:38 25 the U.S.



04:26:38 1 Q. All right. A little slower, Doctor.

04:26:41 2 So was -- so you can tell -- strike that.

04:26:45 3 Can you tell that Call of Mini was released in the  
04:26:47 4 United States?

04:26:48 5 A. Yes.

04:26:50 6 Q. All right. And how is that?

04:26:51 7 A. From the information available on Sensor Tower.

04:26:56 8 Q. All right.

04:26:56 9 MR. SACKSTEDER: Let's -- let's go to the next  
04:26:57 10 slide.

04:26:58 11 Q. (By Mr. Sacksteder) Okay. What are we looking at  
04:27:01 12 here, Dr. Zagal?

04:27:02 13 A. So I mentioned that we were going to watch a video from  
04:27:06 14 YouTube. This is a page on which that video resides. This  
04:27:09 15 is where you would go to -- to watch that video on YouTube  
04:27:13 16 itself.

04:27:14 17 Q. And what is the significance of what we see from the  
04:27:20 18 page where Call of Mini was -- that video was shown?

04:27:23 19 A. So the page basically let's you know when this video  
04:27:26 20 was first published, when it was made available publicly.

04:27:29 21 Q. And where do you see that?

04:27:31 22 A. On the call-out there, under the title of the video,  
04:27:35 23 you can see the date July 3rd, 2012.

04:27:38 24 Q. Who could access this page from YouTube starting on  
04:27:41 25 July 3rd, 2012?

04:27:43 1 A. Anybody in the world with access to YouTube, including  
04:27:48 2 the United States, of course.

04:27:49 3 Q. How do you know that it was publicly available on that  
04:27:51 4 date?

04:27:51 5 A. Because YouTube says so.

04:27:55 6 Q. How do they say so?

04:27:56 7 A. So they actually have help pages that explain when  
04:28:01 8 videos are made available and how you can determine when  
04:28:04 9 they were published, and they basically explain that the  
04:28:07 10 date that appears there is the date that it was made  
04:28:09 11 available.

04:28:10 12 It was also my understanding that counsel obtained  
04:28:13 13 certification from YouTube, a statement from YouTube that  
04:28:16 14 essentially says the same thing.

04:28:24 15 Q. Was Call of Mini Sniper or the video that describes it,  
04:28:29 16 was any of that considered by the Patent Office --

04:28:32 17 A. No.

04:28:32 18 Q. -- before the Patent Office issued the '873 patent?

04:28:35 19 A. No.

04:28:35 20 Q. How do you know that?

04:28:36 21 A. From the patent litigation history.

04:28:39 22 Q. Okay. The prosecution history?

04:28:44 23 A. Yes. My apologies.

04:28:45 24 Q. Does Call of Mini Sniper disclose the two-step aim and  
04:28:51 25 shoot process of the '873 patent?

04:28:52 1 A. Yes, it does.

04:28:54 2 Q. All right. Can -- can you explain that?

04:28:58 3 MR. SACKSTEDER: And let me -- actually,

04:29:00 4 Mr. Smith, if you can go forward a little bit -- hold on a

04:29:10 5 second. Do we have -- do we have --

04:29:24 6 Mr. Smith, can we go to the portion that discusses

04:29:27 7 the patent claim? Keep going through the slides, we'll

04:29:31 8 find it.

04:29:40 9 Q. All right. So do you see some screenshots on the right

04:29:46 10 side of the screen, Doctor?

04:29:47 11 A. I do.

04:29:48 12 MR. SACKSTEDER: All right. Can we blow those up,

04:29:51 13 Mr. Smith? Oh, we can't.

04:29:53 14 Q. (By Mr. Sacksteder) All right. So can you see the

04:29:56 15 upper left side -- the upper left screenshot, Doctor?

04:29:59 16 A. Yes, I can.

04:30:00 17 Q. And what do we see there?

04:30:02 18 A. We see an instruction that says: Tap on a target to

04:30:06 19 zoom. And it's sort of an icon.

04:30:09 20 Q. All right. And can you walk through the claim elements

04:30:14 21 with reference to the screenshots and the video that we've

04:30:17 22 already looked at?

04:30:18 23 A. Absolutely. So the claim requires a game system

04:30:22 24 comprising a terminal device, including a display

04:30:27 25 configured to display a game image and a touch panel

04:30:27 1 provided integral with the display.

04:30:34 2 An iPhone -- this game was played on an iPhone,  
04:30:36 3 and the iPhone is such a device; it has a touchscreen and  
04:30:41 4 it can show images.

04:30:43 5 Q. And then the next claim element is a game server  
04:30:48 6 apparatus configured to be connected to the terminal device  
04:30:50 7 via a network. Is that practiced?

04:30:52 8 A. Yes, that is practiced.

04:30:54 9 Q. How do we know that?

04:30:56 10 A. It is well-known that the iPhone can connect to the  
04:30:58 11 Internet. In -- in the case of the game specifically, if  
04:31:00 12 we look at the screenshot on the bottom right, this  
04:31:04 13 screenshot shows a store.

04:31:06 14 So this was a free-to-play game. And the way the  
04:31:11 15 game creators expected or hoped to make money was by  
04:31:18 16 selling virtual currency that you would purchase with  
04:31:18 17 real-world money.

04:31:18 18 And to do that, you would go to the store. If you  
04:31:21 19 wanted to obtain such currency, you would tap on the red  
04:31:24 20 button that says tBANK. And at that moment, the  
04:31:29 21 transaction would be processed, and that would connect to a  
04:31:31 22 server.

04:31:31 23 Q. And then the claim goes on to say: The terminal device  
04:31:35 24 includes first circuitry configured to identify a first  
04:31:38 25 touch operation on the touch panel.

04:31:40 1 Is that shown in the screenshots?

04:31:41 2 A. Yes.

04:31:42 3 Q. Where is it?

04:31:43 4 A. That's the one on the top left where it says, tap on a  
04:31:46 5 target to zoom.

04:31:47 6 Q. And then when you tap, what do you see?

04:31:55 7 A. You see what's on the top right, the screenshot on the  
04:31:58 8 top right.

04:31:59 9 Q. And is that Element b?

04:32:00 10 A. Yes.

04:32:01 11 Q. Explain why that is your opinion.

04:32:02 12 A. So you'd need to display a frame that is an image.

04:32:06 13 That image needs to be indicative of a shooting effective  
04:32:14 14 range in accordance with the position of the first touch  
04:32:14 15 operation.

04:32:15 16 The image within the frame is based on the  
04:32:16 17 position of the touch operation. So where you tap is where  
04:32:20 18 you zoom, and that's what happens in this game.

04:32:23 19 Q. All right. We looked at, I believe, Figure 3 from the  
04:32:27 20 patent --

04:32:27 21 A. Uh-huh.

04:32:28 22 Q. -- a little while ago and it showed a -- kind of like a  
04:32:32 23 rifle scope.

04:32:33 24 A. Yes, we did.

04:32:34 25 Q. And is that a shooting effective range -- a frame

04:32:37 1 indicative of a shooting effective range in the patent in  
04:32:39 2 the description of an embodiment in the patent?

04:32:42 3 A. Yes, the inventors actually provide that as -- as an  
04:32:45 4 example of possible embodiment. So, yes.

04:32:47 5 Q. All right. And does that look similar to the scope  
04:32:51 6 that you see in Call of Mini Sniper?

04:32:54 7 A. Very much so.

04:32:57 8 Q. All right. And then we talked before about -- when we  
04:33:05 9 were talking about non-infringement in accordance with the  
04:33:08 10 position of the first touch operation, do you have an  
04:33:08 11 opinion whether that's shown in the Call of Mini video?

04:33:11 12 A. Yes, it is the first touch operation that brings up the  
04:33:15 13 scope. So that matches the -- the claim.

04:33:19 14 Q. All right. And where do you touch? And where does the  
04:33:23 15 scope show up?

04:33:24 16 A. You touch wherever you want on the screen, and then the  
04:33:27 17 scope zooms in based on the position at where you touched.

04:33:31 18 Q. And then it says: Identify a second touch operation,  
04:33:35 19 that the touch panel has an instruction for an attack when  
04:33:37 20 the frame is displayed by the display. Do you see that?

04:33:41 21 A. Yes, I do.

04:33:42 22 Q. All right. And is that performed by a Call of Mini  
04:33:44 23 Sniper?

04:33:44 24 A. It is.

04:33:45 25 Q. All right. Can you explain how you know that?

04:33:47 1 A. Yeah. So we can see on the screenshot on the top  
04:33:50 2 right, her hand is the -- the icon on the hand is  
04:33:52 3 indicating that you need to tap that little button in the  
04:33:54 4 corner. That will execute the fire -- the attack command.

04:33:59 5 And at the moment you are doing that, we are  
04:34:02 6 seeing the frame -- you are in -- in the scope view.

04:34:05 7 Q. All right.

04:34:05 8 MR. SACKSTEDER: Let's move on to the next slide.

04:34:07 9 Q. (By Mr. Sacksteder) There -- the last element was  
04:34:09 10 related to a server that controls to attack, correct?

04:34:12 11 A. That is correct.

04:34:13 12 Q. All right. What is your analysis with respect to that  
04:34:17 13 last claim element?

04:34:18 14 A. That it would have been obvious to implement that.

04:34:25 15 Q. And -- and what do you see here on the screen?

04:34:27 16 A. So this is from the same video. And there's a little  
04:34:30 17 sort of advertisement banner that appears along the bottom,  
04:34:33 18 and it refers to a game called Call of Mini Zombies. And  
04:34:37 19 they're sort of announcing there's an update.

04:34:40 20 And amongst the elements of this update, they have  
04:34:43 21 a versus, a deathmatch, and a multiplayer. So the  
04:34:45 22 developers of another game that they had worked on, they  
04:34:49 23 had -- they're announcing that they've added multiplayer  
04:34:51 24 features to the game.

04:34:52 25 Q. And if you were to convert Call of Mini Sniper from a

04:34:56 1 single player to a multiplayer game, would it be obvious to  
04:35:02 2 have the server control to attack?

04:35:04 3 A. Yes.

04:35:04 4 Q. Why?

04:35:04 5 A. It was very well-known at the time, for a variety of  
04:35:07 6 reasons.

04:35:07 7 Q. What reasons?

04:35:08 8 A. So one reason, this was common knowledge that you would  
04:35:14 9 implement a lot of functionality on a server. You would do  
04:35:17 10 that for matters of security -- for example, to mitigate  
04:35:20 11 cheating.

04:35:21 12           There's a truism in the game industry, which is,  
04:35:25 13 you never trust the client. In this case, they don't mean  
04:35:28 14 the consumer. What they mean is the device on which the  
04:35:31 15 game is running, because the owner of the game does not  
04:35:33 16 have control over that device. They can't.

04:35:36 17           But the player, the person who owns that device,  
04:35:39 18 they can hack -- they can hack their own phone and make  
04:35:42 19 changes to the code. So they can send messages to the  
04:35:45 20 server indicating, for example, that I just fired a  
04:35:48 21 headshot when, in fact, I did not.

04:35:50 22           So in order to reduce that kind of cheating, what  
04:35:54 23 you would do is you would make sure the server receives all  
04:35:57 24 the messages for where the players are firing, for example,  
04:35:59 25 and you sort of verify that they are sort of legitimate



04:36:02 1 kinds of -- of operations.

04:36:03 2 Q. How do you know this?

04:36:04 3 A. It was common knowledge at the time. There's also  
04:36:08 4 multiple textbooks, all published prior to the patent, that  
04:36:12 5 explained as much.

04:36:14 6 There's -- these are specific game networking and  
04:36:18 7 game development in the context of networking textbooks.  
04:36:22 8 These textbooks had chapters on cheating. And they talk  
04:36:25 9 about different ways to mitigate that. And this is one of  
04:36:28 10 the common ways to do that.

04:36:29 11 Q. You mentioned earlier, way back, that you taught a  
04:36:32 12 class on game ethics?

04:36:34 13 A. Yes.

04:36:35 14 Q. Was cheating part of your game ethics class?

04:36:38 15 A. Yes, it is something we talk about a lot in class.

04:36:41 16 Q. All right. Is there also a patent that shows this?

04:36:44 17 A. Yes.

04:36:45 18 MR. SACKSTEDER: And let's look at DX-570.

04:36:48 19 Q. (By Mr. Sacksteder) What are we looking at there?

04:36:49 20 A. So this is a patent I'm going to call the Sakurai  
04:36:56 21 patent from June 11th of 2010.

04:36:59 22 Q. Was this available before the '873 patent priority  
04:37:02 23 date?

04:37:02 24 A. Yes.

04:37:02 25 Q. And how do you know that?

04:37:02 1 A. Because 2010 is -- is prior to 2013.

04:37:06 2 Q. All right. And there's also -- at the upper right, it  
04:37:10 3 says filed June 13th, 2011?

04:37:12 4 A. Uh-huh.

04:37:13 5 Q. And that was in the U.S., correct?

04:37:15 6 A. Correct.

04:37:15 7 Q. All right. Was this available for -- available before  
04:37:18 8 the '873 patent priority date?

04:37:22 9 A. Yes.

04:37:23 10 Q. Okay. And what does it disclose?

04:37:25 11 A. So this is a patent -- I believe it was owned by  
04:37:29 12 Nintendo. In fact, you can see a picture there on the --  
04:37:32 13 on the right. It's a Nintendo DS device where they sort of  
04:37:32 14 erase the buttons just to focus on the screens.

04:37:38 15 The bottom screen is a touchscreen. It's a patent  
04:37:41 16 about figuring out how to make aiming and shooting work in  
04:37:45 17 these 3D environments with these types of screens.

04:37:47 18 MR. SACKSTEDER: Let's go to the next slide.

04:37:49 19 Q. (By Mr. Sacksteder) And what is the significance of  
04:37:51 20 the highlighted portion of the Sakurai patent?

04:37:56 21 A. So this highlighted portion, I'm going to read it. The  
04:37:59 22 main process steps of the process performed by the  
04:38:02 23 information processing apparatus, as described above, may  
04:38:05 24 be executed on the server side.

04:38:06 25 And, basically, what that says is, hey, in a game

04:38:09 1 there's a bunch of processes that do different things. The  
04:38:13 2 important ones you can have them run on a server. You  
04:38:15 3 could also have them run the client.

04:38:17 4 So it is very common knowledge to know that for  
04:38:20 5 managing a game, especially the main ones, you would  
04:38:24 6 actually want to have them run on the server.

04:38:25 7 Q. Why would a person of skill in the art look to the  
04:38:30 8 Sakurai patent?

04:38:31 9 A. So, in this case, this patent is about games, it is  
04:38:33 10 about shooting, it is about games on devices with  
04:38:35 11 touchscreens. So they're very strongly connected.

04:38:37 12 Q. And is there anything in the '873 patent that supports  
04:38:40 13 your opinion?

04:38:41 14 A. Yes, in fact.

04:38:43 15 Q. What is that?

04:38:44 16 A. So if you exclude the claim language, the word "server"  
04:38:48 17 only appears twice in the entirety of the body of the  
04:38:50 18 patent. There is no information about any specific kind of  
04:38:56 19 configuration that this server needs to have. There's no  
04:38:59 20 disclosure of anything unique or special that the server  
04:39:02 21 needs to have. Nothing that explains any technical details  
04:39:06 22 about the server.

04:39:07 23 So they basically just use the word "server" in  
04:39:09 24 the way that it would have been used at the time in its  
04:39:14 25 generic sense.

04:39:15 1 Q. All right. What's your opinion about Claims 8 and 10  
04:39:17 2 of the '5 -- of the '873 patent, in light of this prior  
04:39:20 3 art?

04:39:20 4 A. I believe it renders the patent invalid.

04:39:23 5 THE COURT: Counsel, what do you estimate the  
04:39:25 6 remainder of your direct to be?

04:39:27 7 MR. SACKSTEDER: I would say maybe 20, 25 minutes.

04:39:30 8 THE COURT: Well, it's been nearly two hours since  
04:39:33 9 the jury had a recess. We're going to take a recess at  
04:39:36 10 this point. We'll come back, and you can finish your  
04:39:38 11 direct.

04:39:39 12 Ladies and gentlemen of the jury, if you will  
04:39:41 13 close your notebooks and leave them in your chairs, follow  
04:39:43 14 all the instructions I've given you, including not to  
04:39:47 15 discuss the case among yourselves, and we'll be back  
04:39:49 16 shortly to continue with the Defendant's direct examination  
04:39:52 17 of this witness.

04:39:52 18 The jury is excused for recess.

04:39:54 19 COURT SECURITY OFFICER: All rise.

04:39:55 20 (Jury out.)

04:39:57 21 THE COURT: I will do a better job of keeping it  
04:40:21 22 to 10 minutes this time than I did the last time.

04:40:24 23 We stand in recess.

04:40:27 24 (Recess.)

04:54:39 25 (Jury out.)

04:54:41 1 COURT SECURITY OFFICER: All rise.

04:54:42 2 THE COURT: Be seated, please.

04:54:43 3 You ready to continue, Mr. Sacksteder?

04:54:47 4 MR. SACKSTEDER: I am, Your Honor.

04:54:48 5 THE COURT: Let's bring in the jury, please.

04:54:50 6 COURT SECURITY OFFICER: All rise.

04:54:58 7 (Jury in.)

04:55:05 8 THE COURT: Please be seated.

04:55:23 9 All right. Counsel, you may continue with your  
04:55:29 10 direct examination.

04:55:30 11 MR. SACKSTEDER: Thank you, Your Honor.

04:55:31 12 Q. (By Mr. Sacksteder) Dr. Zagal, you also mentioned a  
04:55:34 13 prior art reference called Sniper vs. Sniper: Online?

04:55:38 14 A. I did.

04:55:38 15 Q. What is that?

04:55:39 16 A. It's a mobile game that's played online where you play  
04:55:44 17 as a sniper.

04:55:45 18 Q. When was it released?

04:55:46 19 A. In October 2009.

04:55:48 20 Q. How did you confirm that?

04:55:50 21 A. Also, by Sensor Tower data and the App Store  
04:55:55 22 information.

04:55:55 23 MR. SACKSTEDER: Can we go to the next slide,  
04:55:58 24 please?

04:55:58 25 Q. (By Mr. Sacksteder) What are we looking at here?

04:56:00 1 A. This is a YouTube page for a video we'll be watching.

04:56:03 2 We can see it was published in -- January 9th, 2010.

04:56:09 3 Q. And do you know it's -- it was publicly accessible for  
04:56:11 4 the same reason you did with the YouTube video for Call --  
04:56:20 5 Call of Mini Sniper?

04:56:21 6 A. Yes.

04:56:21 7 MR. SACKSTEDER: Let's go to the next slide. Take  
04:56:25 8 a look at the video. Can you start playing it, Mr. Smith?  
04:56:31 9 Play it for about 10 seconds.

04:56:34 10 (Videoclip played.)

04:56:37 11 Q. (By Mr. Sacksteder) All right. What are we seeing  
04:56:38 12 here, Doctor?

04:56:39 13 A. So we're seeing an introductory cut scene, is what it's  
04:56:46 14 called in the games industry, for this game.

04:56:47 15 Q. Are there controls for aiming and shooting in Sniper  
04:56:51 16 vs. Sniper?

04:56:51 17 A. There are.

04:56:56 18 MR. SACKSTEDER: Let's move to the next video.

04:56:57 19 Q. (By Mr. Sacksteder) What are we looking at here?

04:56:59 20 A. We're looking at a -- a screenshot from the video.

04:57:02 21 Q. What's the significance? Well, what is -- what is that  
04:57:08 22 trying to tell to the user?

04:57:09 23 A. So here, we are seeing two -- two things. On the left  
04:57:14 24 is a screenshot from the video, and it's a tip providing  
04:57:19 25 information to the player, explaining how to enter

04:57:23 1 different modes of the game and that you do so by tapping  
04:57:27 2 on the screen.

04:57:27 3 Q. And on the right what do we see?

04:57:30 4 A. On the right is a message that says that the game will  
04:57:33 5 correct to an online server, and that that will allow  
04:57:37 6 players to compete against other players around the world.

04:57:41 7 Q. All right.

04:57:41 8 MR. SACKSTEDER: Let's move on to the video,  
04:57:42 9 please. Next slide.

04:57:45 10 Q. (By Mr. Sacksteder) What do we have there?

04:57:47 11 A. So now we are seeing the -- the dialog box which has  
04:57:50 12 been re-created on the right.

04:57:51 13 Q. Let's -- let's move on again?

04:57:57 14 MR. SACKSTEDER: All right. Please play it.

04:57:59 15 Q. (By Mr. Sacksteder) What's this?

04:57:59 16 A. So from the main menu of the game, when you tap on  
04:58:05 17 online play, the player is asked if they want to connect  
04:58:09 18 online. And if they tap on yes, they then see a message  
04:58:13 19 saying connecting to game server and a wheel loading.

04:58:17 20 MR. SACKSTEDER: All right. Let's go to the next  
04:58:18 21 video. I think the next one.

04:58:28 22 Q. (By Mr. Sacksteder) What -- it talks about cheating  
04:58:30 23 there?

04:58:31 24 A. Yes. So once the player is online, this is sort of the  
04:58:35 25 online page. There's a message there in red that talks

04:58:38 1 about cheating and possible cheating, letting players know  
04:58:41 2 that the developers of the game are aware that they should  
04:58:44 3 know -- they're letting players know, hey, don't cheat or  
04:58:49 4 we will be punishing you.

04:58:50 5 MR. SACKSTEDER: Let's go to the next video.

04:58:52 6 Q. (By Mr. Sacksteder) All right. That looks not quite  
04:58:54 7 like rifle stuff. What are we looking at there?

04:58:56 8 A. So in this video, we are now in the game. The person  
04:59:00 9 who made the game is sort of in a match. They are in  
04:59:03 10 binocular mode. They're sort of looking around to try to  
04:59:06 11 find an opponent. We're going to see them tap on the  
04:59:08 12 screen.

04:59:09 13 MR. SACKSTEDER: Can we play the video?

04:59:13 14 Q. (By Mr. Sacksteder) Okay. What happened there?

04:59:13 15 A. So they tapped on the screen, and then the scope came  
04:59:16 16 up. So now they're looking through their sniper rifle, and  
04:59:20 17 then they tapped again to fire the weapon.

04:59:25 18 MR. SACKSTEDER: Okay. That happened pretty fast.  
04:59:27 19 Can we go back and look at that one more time?

04:59:31 20 Q. (By Mr. Sacksteder) And you can explain it?

04:59:33 21 So what happened?

04:59:34 22 A. So it's panning around, taps on the screen, scope comes  
04:59:40 23 up, tap again, fires, and the enemy in this case is taken  
04:59:44 24 out.

04:59:44 25 MR. SACKSTEDER: All right. Let's look through



04:59:46 1 the asserted claims in light of this video.

04:59:49 2 Q. (By Mr. Sacksteder) Okay. Is the first element, is  
04:59:52 3 that satisfied?

04:59:53 4 A. Yes, we saw the game being played on an iPhone.

04:59:55 5 MR. SACKSTEDER: Let's go to the next one.

04:59:57 6 Q. (By Mr. Sacksteder) Is that one satisfied?

04:59:58 7 A. Yes, we have seen information regarding the existence  
05:00:01 8 of a game server and that users connect to that game  
05:00:04 9 server.

05:00:06 10 Q. Okay. And identify a first touch operation on the  
05:00:09 11 touch panel?

05:00:09 12 A. Yes, we've also seen that. We saw the player also tap  
05:00:13 13 on the screen and -- and things happen.

05:00:15 14 MR. SACKSTEDER: All right. Let's -- let's go  
05:00:16 15 farther.

05:00:17 16 Q. (By Mr. Sacksteder) Okay. And what do we see there  
05:00:20 17 being displayed?

05:00:20 18 A. So here we see Element b. And on the bottom, sort of  
05:00:27 19 the blow-up, is the way the element was construed by the  
05:00:30 20 Court. So we saw that when they tapped on the screen, we  
05:00:33 21 saw the scope came up, and that the image inside of the  
05:00:36 22 scope was based upon the position of the first touch  
05:00:40 23 operation.

05:00:40 24 MR. SACKSTEDER: Let's go to the next slide.

05:00:42 25 Q. (By Mr. Sacksteder) And then what -- what practices

05:00:43 1 this? What uses this next element?

05:00:45 2 A. This is when the user taps on the sort of button on the  
05:00:48 3 bottom right side of the screen, has a picture that sort of  
05:00:51 4 looks like a bullet, and that makes the attack execute.

05:00:55 5 Q. All right. And then the last element, is it your  
05:00:59 6 opinion this is met also?

05:01:01 7 A. Yes, it is also my opinion it is met.

05:01:03 8 Q. Why?

05:01:04 9 A. It is obvious that the server in this case is  
05:01:07 10 controlling to attack. Sniper vs. Sniper: Online is a  
05:01:12 11 competitive game. You can see there from the screenshot  
05:01:15 12 that there is online plays, a second option on the menu.

05:01:18 13 A third option on the menu is worldwide rankings.  
05:01:21 14 So that means it is competitive at a global scale. I  
05:01:27 15 talked about -- earlier about cheating and about the  
05:01:29 16 importance of mitigating cheating.

05:01:29 17 We saw a screenshot where you could see that the  
05:01:32 18 developers of the game were aware that cheating is an issue  
05:01:33 19 and needs to be resolved.

05:01:34 20 This indicates to me that the creators of the game  
05:01:37 21 were aware of what was common to be done in terms of the  
05:01:41 22 art at that time, and so they would have implemented --  
05:01:44 23 they would have obviously implemented the controlled attack  
05:01:47 24 on their servers.

05:01:48 25 Q. Did you review any source code on a server to figure

05:01:52 1 this out?

05:01:53 2 A. I did not.

05:01:53 3 Q. Is that source code available?

05:01:55 4 A. Not to my knowledge.

05:01:56 5 Q. All right.

05:02:04 6 MR. SACKSTEDER: So let's go to Claim 10.

05:02:08 7 Q. (By Mr. Sacksteder) So before we do, what is your  
05:02:11 8 opinion regarding Claim 8?

05:02:12 9 A. So invalid, the patent is invalid.

05:02:16 10 MR. SACKSTEDER: Let's go to Claim 10.

05:02:19 11 Q. (By Mr. Sacksteder) Do you have any different opinions  
05:02:21 12 regarding Claim 10?

05:02:22 13 A. No. Claim 10 is fundamentally the same as far as the  
05:02:27 14 elements that are required, and we saw that they were all  
05:02:30 15 met with Claim 8, and they were also all met with Claim 10.

05:02:34 16 Q. Do you have an understanding about Dr. Akl's opinions  
05:02:37 17 about whether these references invalidate?

05:02:42 18 A. Yes, I do.

05:02:42 19 Q. And what do you think of those?

05:02:44 20 A. I don't agree with Dr. Akl.

05:02:47 21 Q. Why?

05:02:48 22 A. There's a couple of things that Dr. Akl argues. He --  
05:02:57 23 he claims that the scope image does not count as a frame  
05:03:00 24 for the purposes of the claim language.

05:03:02 25 Q. Okay.

05:03:02 1 MR. SACKSTEDER: Can we go to the slide showing  
05:03:04 2 Figure 4? Go forward. There you go.

05:03:13 3 Q. (By Mr. Sacksteder) And what's the significance of  
05:03:14 4 what we're looking at?

05:03:17 5 A. So in the patent itself, they use the language of an  
05:03:20 6 image simulating an image of an optical sight, in  
05:03:25 7 parentheses, scope. So I think it's pretty obvious that a  
05:03:28 8 scope was within the embodiments that this patent could  
05:03:31 9 take.

05:03:31 10 Q. And how does Dr. Akl's opinion compare to the Court's  
05:03:34 11 construction of the frame indicative of a shooting  
05:03:37 12 effective range?

05:03:37 13 A. I believe there's also a difference there between the  
05:03:40 14 Court's construction and Dr. Akl's opinion.

05:03:44 15 Q. What does the patent teach about a server controlling  
05:03:53 16 to attack?

05:03:53 17 A. Nothing, in particular, with this patent.

05:03:55 18 Q. Does it provide any technical details?

05:03:57 19 A. None.

05:04:06 20 Q. All right. You also have an invalidity opinion  
05:04:08 21 concerning the '655 patent?

05:04:10 22 A. I do.

05:04:11 23 Q. All right. Remind us what that patent is about.

05:04:13 24 A. So this is a patent about gifting and about  
05:04:18 25 incentivizing gifting and about doing so by incentivizing

05:04:21 1 the person receiving the gift based on a condition.

05:04:25 2 MR. SACKSTEDER: Can we see the front page of the  
05:04:28 3 '655 patent? And can we blow up the foreign patent and the  
05:04:38 4 foreign filing priority date down at the bottom? It's in  
05:04:44 5 Line 30.

05:04:46 6 Q. (By Mr. Sacksteder) What's -- what's the filing date  
05:04:49 7 for the '655 patent?

05:04:50 8 A. The foreign application priority date is September  
05:04:55 9 20th, 2012.

05:04:58 10 MR. SACKSTEDER: All right. Can we move forward  
05:04:59 11 in the slides, Mr. Smith? I need to go a few -- a few  
05:05:08 12 slides in. Keep going. Keep going. Keep going. Keep  
05:05:15 13 going. All right.

05:05:16 14 Q. (By Mr. Sacksteder) What is FarmVille, Dr. Zagal?

05:05:21 15 A. FarmVille is a -- is a very popular game.

05:05:25 16 Q. And how was it played?

05:05:27 17 A. It was played in a variety of ways. You can play it on  
05:05:31 18 your computer, on the web, you could play it through  
05:05:34 19 Facebook, you could also play it on a mobile device.

05:05:36 20 Q. And have you ever played FarmVille?

05:05:38 21 A. Yes, I did, back in the day.

05:05:40 22 Q. And what do you mean by back in the day?

05:05:42 23 A. In the 2009 to 2011 range, thereabouts. I don't recall  
05:05:47 24 exactly.

05:05:47 25 Q. Okay. And it was originally a Facebook game?

05:05:51 1 A. The way I played it was through Facebook.

05:05:53 2 Q. And did it ever become a mobile game?

05:05:55 3 A. Yes.

05:05:56 4 Q. And was it a mobile game before the filing date of the  
05:05:59 5 '655 patent?

05:05:59 6 A. Yes, I believe the mobile version was released in 2010.

05:06:02 7 Q. All right.

05:06:09 8 MR. SACKSTEDER: May I approach, Your Honor?

05:06:12 9 THE COURT: You may. If you'll hand that to the  
05:06:17 10 Court Security Officer, he'll hand it to the witness.

05:06:21 11 MR. SACKSTEDER: Thank you.

05:06:22 12 THE WITNESS: Thank you.

05:06:22 13 Q. (By Mr. Sacksteder) What have you just been handed,  
05:06:25 14 Dr. Zagal?

05:06:26 15 A. I've been handed a copy of FarmVille for Dummies, the  
05:06:31 16 book.

05:06:31 17 Q. And what is the significance of that book?

05:06:33 18 A. So this book explains how to play FarmVille and how to  
05:06:37 19 be successful at playing FarmVille.

05:06:39 20 Q. Does it have a date in it, copyright date?

05:06:43 21 A. Yes, it does.

05:06:44 22 Q. Okay. And what is that date?

05:06:45 23 A. The copyright date is 2011. I can see that there's  
05:06:49 24 also a Library of Congress control number available.

05:06:53 25 Q. Okay.

05:06:53 1 A. And there's also an ISDN number.

05:06:56 2 Q. And do you know where this particular copy of FarmVille  
05:07:00 3 for Dummies was -- was available?

05:07:02 4 A. This specific copy was -- this is an old library copy  
05:07:08 5 from the Mid-Continent Public Library, so it belonged to  
05:07:12 6 their collection. There's stickers and stamps.

05:07:16 7 Q. Have you reviewed any documents that confirmed that's  
05:07:20 8 where that came from?

05:07:21 9 A. Yes, I have.

05:07:21 10 Q. And do you know when it was available at that library?

05:07:24 11 A. In 2011.

05:07:29 12 Q. What does the book disclose?

05:07:31 13 A. A whole bunch of things about FarmVille, and it  
05:07:35 14 discloses all the elements of the claims.

05:07:39 15 Q. All right. Was FarmVille for Dummies considered by the  
05:07:42 16 Patent Office in connection with the application of the  
05:07:47 17 '655 patent?

05:07:47 18 A. No.

05:07:48 19 Q. Was the game FarmVille considered by the Patent Office  
05:07:52 20 in connection with the application for the '655 patent?

05:07:56 21 A. No.

05:07:57 22 Q. Okay.

05:07:57 23 MR. SACKSTEDER: Can we go to the slide with  
05:07:59 24 Claims 1 and 7 and Claim 5, Mr. Smith?

05:08:15 25 Q. (By Mr. Sacksteder) What are we looking at here,

05:08:17 1 Dr. Zagal?

05:08:17 2 A. So these are the asserted claims, 5 and 7.

05:08:21 3 Q. And this relates to gifting and incentives for gifting,  
05:08:27 4 correct?

05:08:27 5 A. Exactly.

05:08:27 6 Q. Was there a gifting functionality in FarmVille?

05:08:31 7 A. Yes, there was.

05:08:32 8 Q. What kind of a part of the game was that?

05:08:34 9 A. It was a pretty important part.

05:08:36 10 Q. And what kind of things could be associated with that  
05:08:42 11 gifting feature?

05:08:43 12 A. So gifting was one of the main ways that players could  
05:08:47 13 make progress in the game, and you had to have friends --  
05:08:50 14 they were called neighbors in FarmVille -- and you could  
05:08:53 15 send each other items.

05:08:54 16 And there was a lot of quests and missions that  
05:08:57 17 required certain items in order to be completed. There was  
05:09:00 18 also certain achievements and rewards you could obtain in  
05:09:03 19 the game by completing these quests, and many of these are  
05:09:07 20 also related to receiving items as gifts.

05:09:07 21 Q. Were some of the items ribbons and collections?

05:09:13 22 A. Yes, those are two examples.

05:09:15 23 MR. SACKSTEDER: Can we look at the slide that  
05:09:17 24 shows ribbons and collections, Mr. Smith? There you go.

05:09:26 25 Q. (By Mr. Sacksteder) What are we looking at, sir?



05:09:27 1 A. So on the left, we see some pictures of different kinds  
05:09:31 2 of ribbons that you could earn in the game, and they each  
05:09:36 3 had their own conditions. And on the right, we see  
05:09:39 4 examples of different types of collections that users could  
05:09:42 5 try to -- players could try to complete.

05:09:45 6 Q. What's a collection?

05:09:47 7 A. It's a set of specific objects, and a player completes  
05:09:51 8 a collection when they obtain all of the objects in that  
05:09:57 9 collection.

05:09:58 10 Q. So once you fulfill your collection, then you get  
05:10:01 11 something else; is that right?

05:10:01 12 A. Yes, you get a reward.

05:10:03 13 MR. SACKSTEDER: Let's go to the next slide --  
05:10:05 14 there you go.

05:10:06 15 Q. (By Mr. Sacksteder) Okay. What is the Not Spoiled  
05:10:12 16 Gifted Ribbon, what does that refer to?

05:10:13 17 A. So this is a ribbon that you can earn in the game.  
05:10:17 18 They come in four different colors from easiest to hardest.  
05:10:21 19 And this table right there comes from this book, and it --  
05:10:25 20 it explains in order to earn this ribbon, what you need to  
05:10:28 21 do is you need to -- and I'm going to read from the table:  
05:10:32 22 Have X unique gifts in your gift box.

05:10:35 23 If you wanted to earn the yellow ribbon, that  
05:10:39 24 number was three. So you needed to have three unique gifts  
05:10:39 25 in your gift box, and so on and so forth, for the other

05:10:41 1 colored ribbons.

05:10:41 2 Q. Where do the gifts come from?

05:10:43 3 A. The gifts come from other people that they send them to  
05:10:50 4 you.

05:10:50 5 MR. SACKSTEDER: Let's go to Claims 1 and 7, the  
05:10:52 6 preamble.

05:11:00 7 Q. (By Mr. Sacksteder) Did you consider whether the  
05:11:01 8 preamble is satisfied?

05:11:02 9 A. It is satisfied. The preamble requires a server that  
05:11:07 10 provides the service of the game to a plurality of devices  
05:11:11 11 used by all of the users and that the server communicates  
05:11:16 12 to these devices.

05:11:17 13 MR. SACKSTEDER: Can we see the next slide?

05:11:19 14 Q. (By Mr. Sacksteder) Does that show that from the book?

05:11:21 15 A. Yes. Two different screenshots. One explained that,  
05:11:26 16 hey, this game is played on the Internet, and you will need  
05:11:28 17 to connect to the Internet in order to connect to the  
05:11:31 18 servers that run this game.

05:11:33 19 And the second one communicates similar  
05:11:36 20 information but for your mobile device.

05:11:38 21 MR. SACKSTEDER: Okay. Can we move to the next  
05:11:40 22 slide, please?

05:11:41 23 Q. (By Mr. Sacksteder) And those are -- those preambles  
05:11:44 24 are satisfied, correct?

05:11:45 25 A. Yes.

05:11:45 1 MR. SACKSTEDER: All right. Let's go to the next  
05:11:47 2 one.

05:11:47 3 Q. (By Mr. Sacksteder) What is required here in 1a and  
05:11:50 4 7a?

05:11:50 5 A. A storage medium where the objects that you possess in  
05:11:55 6 the game are -- are kept for all of the users, as well as  
05:12:00 7 the transfer information of -- of any transfers that may  
05:12:03 8 have happened between users.

05:12:05 9 MR. SACKSTEDER: All right. Let's move to the  
05:12:06 10 next slide.

05:12:07 11 Q. (By Mr. Sacksteder) And, Doctor, can you tell us how  
05:12:09 12 FarmVille meets this element?

05:12:10 13 A. So here we at risk seeing two different things.

05:12:13 14 On the left -- on the left is a picture of the  
05:12:17 15 free gifts page. Again, this is from this book. It sort  
05:12:20 16 of indicates the kinds of gifts you can send to other  
05:12:24 17 people. And on the right you see the gift box, and that  
05:12:27 18 has a list of all the gifts that a user has received.

05:12:31 19 Q. Are these from the video -- are these from the game?

05:12:34 20 A. Yes.

05:12:34 21 MR. SACKSTEDER: Let's go to the next slide.

05:12:36 22 Q. (By Mr. Sacksteder) And is that limitation satisfied?

05:12:38 23 A. So it is satisfied. It is -- it is also satisfied,  
05:12:43 24 because if I were to play the game on my phone, for  
05:12:47 25 example, and I lose my phone and I get a new phone, I could

05:12:50 1 download the game again, log in with my account, and all  
05:12:52 2 the gifts that I have received in my gift box would still  
05:12:56 3 be there. I wouldn't lose any.

05:12:57 4 Q. All right.

05:12:57 5 A. So that indicates that that information is being stored  
05:13:03 6 on the server.

05:13:03 7 Q. All right.

05:13:03 8 MR. SACKSTEDER: And go back to the previous  
05:13:06 9 slide.

05:13:06 10 Q. (By Mr. Sacksteder) On the left is that from the  
05:13:08 11 FarmVille for Dummies book?

05:13:09 12 A. Yes.

05:13:09 13 MR. SACKSTEDER: And then let's move on to 1b  
05:13:13 14 of -- 1b and 7b of the claims.

05:13:15 15 Q. (By Mr. Sacksteder) What's -- what's required there?

05:13:18 16 A. So this is the -- the language that requires that the  
05:13:23 17 person who is going to send the gift choose the gift they  
05:13:27 18 want to send from a variety of gifts that are available,  
05:13:32 19 and also choose to whom they want to send a gift from a  
05:13:36 20 variety of people that are -- are available for them to  
05:13:39 21 send gifts to.

05:13:40 22 MR. SACKSTEDER: Next slide, please.

05:13:42 23 Q. (By Mr. Sacksteder) Does this satisfy 1b and 7b?

05:13:46 24 A. It does.

05:13:46 25 Q. Please explain how.

05:13:47 1 A. So this is, again, from the book, and it explains how  
05:13:51 2 the gifting process works.

05:13:53 3 In Line -- in Item No. 2, we can see it says:  
05:13:57 4 Select the radio button under the gift you'd like to give.  
05:14:01 5 And there's an example. There are all the gifts that are  
05:14:03 6 available, so it's letting the user know -- pick the gift  
05:14:06 7 you would like to send.

05:14:07 8 And then on Step 4, it says: Select the check  
05:14:10 9 boxes next to the friends to whom you want to send the  
05:14:13 10 gift, explaining that after you select what you want to  
05:14:17 11 send, you can pick who you would like to send gifts to.

05:14:20 12 Q. Is 7(1) and 7c satisfied?

05:14:25 13 A. Yes.

05:14:26 14 Q. All right.

05:14:26 15 MR. SACKSTEDER: Let's move on. All right. Next  
05:14:28 16 slide. Next slide. All right. Sorry, 1c -- go back one.

05:14:33 17 Q. (By Mr. Sacksteder) Okay. What is 1c and 7c?

05:14:36 18 A. So 1c requires that transfer information needs to be  
05:14:40 19 updated in response to this request to transfer. So it's  
05:14:43 20 the idea that the person -- in this case the second user,  
05:14:46 21 the person receiving the gift, needs to have some  
05:14:48 22 information about the gift that has been received.

05:14:51 23 Q. And does FarmVille meet this element?

05:14:54 24 A. Yes, it does.

05:14:55 25 MR. SACKSTEDER: Next slide.

05:14:56 1 Q. (By Mr. Sacksteder) Please explain how.

05:14:57 2 A. So the gift boxes is one way, and we see that picture  
05:15:01 3 on -- on the right. The gift box contains all the gifts  
05:15:04 4 that I have received. And so if someone were to send me a  
05:15:09 5 gift, it would now appear in that image.

05:15:12 6 There's also instructions letting people know from  
05:15:16 7 the book in this case how to manage like your gifts and  
05:15:19 8 where to go to manage your gifts and see information about  
05:15:21 9 them.

05:15:21 10 MR. SACKSTEDER: Let's go on to the next slide.

05:15:23 11 Q. (By Mr. Sacksteder) That claim element is satisfied,  
05:15:27 12 correct?

05:15:27 13 A. Yes.

05:15:27 14 Q. All right.

05:15:27 15 MR. SACKSTEDER: Next slide.

05:15:28 16 Q. (By Mr. Sacksteder) All right. What's 1d?

05:15:30 17 A. 1d refers to this idea that there needs to be a  
05:15:34 18 condition that needs to be satisfied. The person receiving  
05:15:37 19 the second -- for the person receiving the second object.

05:15:42 20 Q. And where do we see that in FarmVille?

05:15:45 21 A. So we see that in the -- in the things you need to do  
05:15:48 22 or things that need to happen in order for you to  
05:15:51 23 receive -- in the case of the not -- Not Spoiled Gifted  
05:15:54 24 Ribbon, there's a condition there. That condition is, have  
05:15:56 25 X unique gifts in your gift box. And if you have the right

05:16:01 1 amount, you would get the appropriate banner.

05:16:01 2           The example on the left is from an event. It's  
05:16:04 3 called 12 Days of Prizes. I'm going to read the text: The  
05:16:07 4 Winter Countdown has started. Come back every day to get  
05:16:10 5 the item of the day from your friends. Collect all 12 and  
05:16:13 6 get a special bonus prize, too.

05:16:15 7           So that explains the condition that will be  
05:16:18 8 evaluated in order for someone to receive a special bonus  
05:16:22 9 prize. In this case, collecting all 12 items that have  
05:16:26 10 been received as gifts from your friends.

05:16:28 11           MR. SACKSTEDER: Next slide.

05:16:29 12 Q. (By Mr. Sacksteder) What's your opinion regarding  
05:16:31 13 Claim 1d and 7d?

05:16:33 14 A. It is met.

05:16:35 15 Q. By FarmVille?

05:16:35 16 A. Yes.

05:16:36 17 Q. And FarmVille for Dummies?

05:16:36 18 A. Yes.

05:16:37 19           MR. SACKSTEDER: Let's move to the next slide.

05:16:40 20 Q. (By Mr. Sacksteder) All right. What is 1e and 7e?

05:16:42 21 A. So this is connected to the previous one. So the  
05:16:45 22 previous claim was, there needs to be a condition. This  
05:16:48 23 basically says that if the condition is met, then you need  
05:16:52 24 to give the -- the gift.

05:16:54 25           MR. SACKSTEDER: Next slide.

05:16:55 1 Q. (By Mr. Sacksteder) Oh, sorry. How is this satisfied?

05:17:02 2 A. So I mentioned that there were conditions already for  
05:17:05 3 both the Winter Countdown and the Not Spoiled Gifted Ribbon  
05:17:10 4 example.

05:17:10 5 So now we can see, well, is there a sign that the  
05:17:15 6 ribbons were received? Does this -- FarmVille let users  
05:17:16 7 know that you got things?

05:17:18 8 Q. So this has to do with granting the second object when  
05:17:22 9 the transfer information of the second user satisfies a  
05:17:27 10 condition for granting the second object, correct?

05:17:31 11 A. Correct.

05:17:31 12 Q. And do we see that in the slide we're looking at?

05:17:34 13 A. In this slide, we see the condition, but I believe we  
05:17:36 14 have another slide showing the -- the granting having  
05:17:40 15 happened.

05:17:40 16 MR. SACKSTEDER: Go ahead. Next slide. Okay.  
05:17:41 17 Let's -- let's go to the next one. Okay. Go back.

05:17:49 18 Q. (By Mr. Sacksteder) Do you see it in --

05:17:49 19 MR. SACKSTEDER: Go back to the previous slide.  
05:17:52 20 Next slide.

05:17:52 21 Q. (By Mr. Sacksteder) Okay. Do you see the granting  
05:17:54 22 happen here, or is it described in 10 days or 12 days of  
05:17:59 23 prizes there?

05:18:00 24 A. Yes, it's -- it's described.

05:18:04 25 MR. SACKSTEDER: Move to the next one.



05:18:06 1 Q. (By Mr. Sacksteder) What's your opinion regarding 1e  
05:18:10 2 and 7e?

05:18:11 3 A. It is met.

05:18:13 4 MR. SACKSTEDER: Next slide.

05:18:14 5 Q. (By Mr. Sacksteder) What do Claim 1f and 7f do?

05:18:18 6 A. So this refers to the notification. So there needs to  
05:18:22 7 be a condition. The second gift needs to be awarded if  
05:18:26 8 this is met, and the user needs to be informed of that  
05:18:30 9 fact.

05:18:30 10 MR. SACKSTEDER: Next slide, please.

05:18:31 11 Q. (By Mr. Sacksteder) And what do we see here?

05:18:33 12 A. So here we see two different examples of notifications  
05:18:36 13 that FarmVille provides. The one on the left has to do  
05:18:39 14 with a gift. It says: You just accepted a free gift. And  
05:18:46 15 it kind of shows who it's from, so the transfer information  
05:18:48 16 is there.

05:18:49 17 The one on the right is for a ribbon, basically  
05:18:51 18 letting the user know you have met the requirements for a  
05:18:54 19 ribbon, and this is your award.

05:18:56 20 MR. SACKSTEDER: Next slide.

05:18:57 21 Q. (By Mr. Sacksteder) What's your opinion concerning 1f  
05:18:59 22 and 7f?

05:19:00 23 A. It is met.

05:19:01 24 MR. SACKSTEDER: Let's go to the next one.

05:19:03 25 Q. (By Mr. Sacksteder) Claim 5, what's your opinion about

05:19:06 1 Claim 5?

05:19:07 2 A. Claim 5 is also met.

05:19:10 3 MR. SACKSTEDER: Go to the next slide, please.

05:19:11 4 Q. (By Mr. Sacksteder) And how do you see that?

05:19:13 5 A. So Claim 5 says -- is a narrowing of the condition. So  
05:19:18 6 the condition needs to be of a specific type. In this  
05:19:21 7 case, the condition has to relate to the number of or types  
05:19:24 8 of objects which have been transferred to the second user.

05:19:28 9 So we need to find a condition that is of that  
05:19:31 10 type in order to -- to show that it is met. The example  
05:19:33 11 here is the 12 Days of Prizes, which is a condition related  
05:19:38 12 to a number of -- in this case 12. So if you get the 12  
05:19:41 13 objects, then you get the bonus one.

05:19:43 14 The ribbon, which is right below the Not Spoiled  
05:19:48 15 Gifted also has a condition related to the number of gifts.  
05:19:50 16 There's 3, 9, 15, and 21.

05:19:53 17 Q. All right.

05:19:54 18 MR. SACKSTEDER: Let's move to the next slide.

05:19:58 19 Well, let's go back for a second.

05:20:01 20 Q. (By Mr. Sacksteder) Do you have an opinion regarding  
05:20:02 21 whether the FarmVille for Dummies book anticipates Claim 5  
05:20:07 22 and Claim 7 of the -- of the '655 patent?

05:20:12 23 A. Yes, they do.

05:20:14 24 MR. SACKSTEDER: Let's go to the next slide.

05:20:17 25 Q. (By Mr. Sacksteder) So what are we looking at here?

05:20:19 1 What's this patent?

05:20:20 2 A. So this is a patent. I'm going to call it Mahajan  
05:20:23 3 patent. It is a patent assigned to Zynga.

05:20:26 4 Q. What is Zynga?

05:20:27 5 A. Zynga is a game development company. They're based in  
05:20:31 6 San Francisco. Zynga has made many games. FarmVille was I  
05:20:37 7 think their -- their first break-out success game.

05:20:39 8 Q. Is Zynga the company that developed FarmVille?

05:20:42 9 A. Yes.

05:20:42 10 Q. All right. What is the significance of this particular  
05:20:47 11 patent?

05:20:48 12 A. So this patent talks about ways to incentivize  
05:20:52 13 gift-giving in the context of playing games such as the  
05:20:56 14 ones that Zynga develops where players are located in the  
05:21:03 15 same physical space.

05:21:04 16 Q. And when was this filed?

05:21:05 17 A. I see June 30th, 2011.

05:21:09 18 Q. All right. And that's under related U.S. application  
05:21:12 19 data --

05:21:14 20 A. Yes.

05:21:14 21 Q. -- correct? And it says it's a continuation of an  
05:21:16 22 application that was filed then, correct?

05:21:17 23 A. Yes.

05:21:17 24 Q. And do you understand that to be the effective filing  
05:21:19 25 date for this patent?

05:21:22 1 A. Uh-huh, yes.

05:21:23 2 Q. Was there anything in this patent that struck you as  
05:21:29 3 relating directly to the '655 patent?

05:21:31 4 A. Yes, there was.

05:21:31 5 Q. And this is more than a year before the '655 patent was  
05:21:34 6 filed, correct?

05:21:35 7 A. Correct.

05:21:35 8 Q. And it was filed in Japan, correct?

05:21:40 9 A. This patent was not filed in Japan.

05:21:43 10 Q. The '655 was filed in Japan. This was filed in the  
05:21:46 11 United States?

05:21:46 12 A. Correct.

05:21:47 13 Q. All right. And what is it about this patent that  
05:21:51 14 struck you?

05:21:51 15 A. So this patent was about incentivizing gift-giving, and  
05:21:55 16 they describe a particular example that could be  
05:22:00 17 implemented thanks to this patent. And I think we can talk  
05:22:01 18 about that.

05:22:02 19 Q. Go ahead and talk about it.

05:22:03 20 THE WITNESS: Can you go to the next slide?

05:22:06 21 A. So in the example they're giving, they're basically  
05:22:08 22 describing a game where a user is in a certain physical  
05:22:12 23 location. Other players of this game are also there. And  
05:22:14 24 the other players give the first user -- sorry, give --  
05:22:19 25 give the user a hundred energy points in total.

05:22:22 1           So let's say there are 10 players. They each give  
05:22:25 2 10, and now you have a hundred. And then the person who  
05:22:28 3 receives these energy points is granted an incentive reward  
05:22:33 4 of a Sword of Doom. And that incentive was based on  
05:22:37 5 requiring 100 energy points from people that were at that  
05:22:38 6 single location.

05:22:38 7 Q. (By Mr. Sacksteder) Did you do anything else --  
05:22:42 8 consider anything else in determining whether the '873 and  
05:22:46 9 '655 patents are invalid?

05:22:47 10 A. Yes, I did.

05:22:47 11 Q. What did you do?

05:22:48 12 A. There are secondary considerations.

05:22:50 13 Q. What are those?

05:22:50 14 A. I understand it's -- it's a legal term, and it refers  
05:22:54 15 to additional things you can consider in order to determine  
05:22:58 16 whether or not a patent might be obvious.

05:23:00 17 Q. All right.

05:23:00 18           MR. SACKSTEDER: Let's go to the second bullet  
05:23:02 19 point, Independent Invention.

05:23:07 20 Q. (By Mr. Sacksteder) What is that?

05:23:07 21 A. So -- so independent invention refers to this idea that  
05:23:12 22 it's possible sometimes that two different people in two  
05:23:16 23 different places might invent the same thing at the same  
05:23:19 24 time. If that is the case, then the thing that they  
05:23:22 25 invented was probably obvious.

05:23:25 1 Q. Let's look at the last one. What is that?

05:23:27 2 A. This refers to the fact that if -- let's say a product  
05:23:30 3 implements a patent and it's successful but that success is  
05:23:34 4 not connected to the patent but rather to other elements,  
05:23:38 5 then the patent itself wasn't particularly novel.

05:23:45 6 Q. Do you know what GREE believes is relevant to this  
05:23:49 7 factor?

05:23:49 8 A. It's my understanding that GREE argues that Supercell's  
05:23:52 9 games are successful because of them implementing elements  
05:23:56 10 of various patents.

05:23:57 11 Q. Okay. So they don't point to any of GREE's own games  
05:24:01 12 to assert commercial success or praise, tied to the  
05:24:06 13 patented feature?

05:24:06 14 A. Correct.

05:24:07 15 Q. They rely on Supercell's games?

05:24:09 16 A. That is my understanding.

05:24:11 17 Q. All right. Do you agree with their position?

05:24:13 18 A. No.

05:24:13 19 Q. Why not?

05:24:15 20 A. Supercell is successful for other reasons entirely.

05:24:18 21 Q. Why is Supercell successful?

05:24:21 22 A. In the context of the game industry, Supercell has --  
05:24:23 23 has a great reputation. And their reputation from other  
05:24:28 24 developers is that they have a really interesting game  
05:24:32 25 development process that they follow internally.

05:24:34 1           They -- Supercell has talked about this at  
05:24:36 2 conferences. And Supercell also has a really unusual  
05:24:39 3 organizational structure. And everyone sort of agrees that  
05:24:43 4 it is these two things that are the keys, success factors  
05:24:49 5 for Supercell.

05:24:49 6 Q. And, in your opinion, does the -- any of the inventions  
05:24:52 7 claimed in any of the patents, the '873 or '655, does that  
05:24:56 8 have anything to do with Supercell's success?

05:24:58 9 A. No, I haven't heard anybody talk about Brawl Stars's  
05:25:02 10 success because of its aiming system. I've never talked  
05:25:09 11 about Clash Royale's success being thanks to it having like  
05:25:12 12 a donating card feature.

05:25:14 13           Players that enjoy the game and are active will  
05:25:17 14 refer to other -- other things about the games that they  
05:25:20 15 enjoy.

05:25:20 16 Q. Thank you, Dr. Zagal.

05:25:21 17           MR. SACKSTEDER: I'll pass the witness.

05:25:23 18           THE COURT: Cross-examination?

05:25:24 19           MR. MOORE: Thank you, Your Honor.

05:25:29 20           And, Your Honor, we have binders to hand out. May  
05:25:32 21 we do that?

05:25:33 22           THE COURT: You may.

05:25:47 23           MR. ABSHER: Your Honor, may we provide a binder  
05:25:49 24 to the witness?

05:25:50 25           THE COURT: Hand it to the Court Security Officer.

05:25:55 1 THE WITNESS: Thank you.

05:26:07 2 THE COURT: All right. Mr. Moore, when you're  
05:26:10 3 ready.

05:26:10 4 MR. MOORE: Thank you, Your Honor.

05:26:10 5 CROSS-EXAMINATION

05:26:10 6 BY MR. MOORE:

05:26:10 7 Q. Good afternoon, Dr. Zagal.

05:26:12 8 A. Good afternoon.

05:26:13 9 Q. My name is Steve Moore, I don't think we've met?

05:26:15 10 A. I don't think we've met either.

05:26:17 11 Q. I'll be asking you a few questions.

05:26:19 12 Now, you are not offering any opinions on the  
05:26:21 13 other three patents that are at issue in this trial; is  
05:26:25 14 that correct?

05:26:25 15 A. That is correct.

05:26:26 16 Q. And so you're -- you're only offering opinions on the  
05:26:30 17 '655 donation patent and the '873 shooting patent, correct?

05:26:34 18 A. Correct.

05:26:36 19 Q. And you understand that all five patents at issue in  
05:26:39 20 this trial relate to mobile gaming?

05:26:43 21 A. I'm not familiar with some of the other patents and  
05:26:48 22 their -- their details.

05:26:49 23 Q. All right. Now, you testified about your hourly rate  
05:26:53 24 at the beginning of your direct; do you recall that?

05:26:56 25 A. Correct.



05:26:56 1 Q. And about how many hours would you say you've put into  
05:27:00 2 this case so far?

05:27:01 3 A. It's been about 170 hours.

05:27:05 4 Q. Okay. All right. Now, your opinions are both on  
05:27:12 5 invalidity and infringement for both the '873 and the '655  
05:27:19 6 patents, correct?

05:27:19 7 A. Correct.

05:27:20 8 Q. All right. Starting with invalidity -- starting with,  
05:27:24 9 I should say, the '873 patent --

05:27:28 10 MR. MOORE: Could we go, please, to Dr. Zagal's  
05:27:31 11 Slide No. 54.

05:27:34 12 Q. (By Mr. Moore) All right. Do you recall looking at  
05:27:47 13 this slide on your direct examination?

05:27:49 14 A. Yes, I do.

05:27:49 15 Q. And you were giving the background of what had been  
05:27:52 16 done in the field of shooting games and touchscreens; is  
05:27:56 17 that correct?

05:27:56 18 A. Yes.

05:27:56 19 Q. But you're not offering an opinion that any of what's  
05:27:59 20 shown here causes the '873 patent to be invalid; is that  
05:28:05 21 correct?

05:28:05 22 A. Correct.

05:28:06 23 Q. All right. Your opinions relating to the alleged  
05:28:10 24 invalidity of the '873 patent are related to Call of Mini  
05:28:17 25 and Sniper vs. Sniper, correct?

05:28:19 1 A. Correct.

05:28:19 2 Q. All right.

05:28:23 3 MR. MOORE: Now, could we go to the opening  
05:28:26 4 slide -- the Plaintiff's -- I'm sorry, Defendant's opening  
05:28:30 5 slides No. 21, please? Thank you.

05:28:36 6 Q. (By Mr. Moore) Were you here for the opening?

05:28:39 7 A. Yes, I was.

05:28:39 8 Q. All right. And do you recall seeing this slide during  
05:28:42 9 the opening --

05:28:44 10 A. I think so.

05:28:44 11 Q. -- by the Defense counsel? I'm sorry?

05:28:48 12 A. Yes, I think so.

05:28:49 13 Q. Thank you.

05:28:50 14 Now, do you see at the top it says Supercell, and  
05:28:52 15 then about the middle of the page under the dates it says  
05:28:55 16 GREE?

05:28:55 17 A. Yes.

05:28:56 18 Q. All right. But neither Sniper vs. Sniper nor Call of  
05:29:03 19 Mini Sniper were made by Supercell, right?

05:29:05 20 A. That's correct.

05:29:06 21 Q. They were made by other companies, right?

05:29:09 22 A. Indeed.

05:29:09 23 Q. And they weren't made -- neither one was made by GREE  
05:29:13 24 either, right?

05:29:16 25 A. Correct.

05:29:17 1 Q. Okay.

05:29:17 2 MR. MOORE: All right. You can take that down.

05:29:19 3 Thank you.

05:29:20 4 Q. (By Mr. Moore) Now, starting with Call of Mini, it's  
05:29:31 5 true that before you started -- well, and strike that.

05:29:33 6 When did you start working on this case?

05:29:37 7 A. I don't recall the exact date, but it's been about a  
05:29:40 8 year.

05:29:40 9 Q. All right. And before you did start working on this  
05:29:43 10 case, it's true that you had never even heard of the Call  
05:29:47 11 of Mini game, correct?

05:29:48 12 A. I believe it's pretty unlikely that I had, yes.

05:29:53 13 Q. All right. And you've never -- well, you didn't  
05:29:55 14 present the jury any source code for Call of Mini in your  
05:29:59 15 direct, right?

05:30:00 16 A. Correct.

05:30:00 17 Q. And you've never even reviewed any of the source code  
05:30:03 18 for Call of Mini, right?

05:30:04 19 A. Right.

05:30:04 20 Q. All right. And you showed pieces from a video of Call  
05:30:13 21 of Mini; do you recall that?

05:30:13 22 A. Yes, I did.

05:30:14 23 Q. And you're -- but you don't know what version of Call  
05:30:19 24 of Mini is actually being played in the video; is that  
05:30:21 25 correct?

05:30:21 1 A. I believe that you can determine that.

05:30:28 2 Q. Okay. But the question, Dr. Zagal, is, do you know, as  
05:30:33 3 you sit here today, what version of the game was being  
05:30:36 4 played in that video that you showed?

05:30:37 5 A. The exact update number, no.

05:30:41 6 Q. And by update number, is that another way of saying  
05:30:45 7 version?

05:30:45 8 A. Sometimes they're used interchangeably, but sometimes  
05:30:48 9 not.

05:30:49 10 Q. All right. And now, I think you said on direct that  
05:30:54 11 Call of Mini was a single-player game; is that right?

05:30:57 12 A. Yes.

05:30:58 13 Q. In other words, if you downloaded the game and played  
05:31:01 14 it, you were just playing against the computer, right?

05:31:03 15 A. Correct.

05:31:04 16 Q. You weren't playing against another player who was  
05:31:08 17 playing the game on their own phone with the two of you  
05:31:12 18 connected by a server, right?

05:31:13 19 A. Correct.

05:31:14 20 Q. Okay. So -- all right. Thank you?

05:31:19 21 MR. MOORE: Now, could we go to Dr. Zagal's Slide  
05:31:21 22 No. 63, please? 63, please. I see 21.

05:31:50 23 Your Honor, I think we have an issue with some  
05:31:54 24 misnumbering these slides that we were provided. I'd --  
05:31:56 25 perhaps, could I ask if Defense counsel could pull up 63,

05:32:00 1 because I think the version we were provided doesn't match  
05:32:02 2 up and --

05:32:03 3 THE COURT: I see no reason why Defense counsel's  
05:32:06 4 IT person can't assist you.

05:32:08 5 MR. MOORE: Thank you.

05:32:08 6 THE COURT: That's a common request.

05:32:10 7 MR. MOORE: Thank you, Your Honor.

05:32:11 8 If we could please pull up 63. Thank -- thank  
05:32:16 9 you. I appreciate that.

05:32:17 10 Q. (By Mr. Moore) Now, you were here for Mr. Friedman's  
05:32:19 11 testimony earlier; is that right?

05:32:20 12 A. What is Mr. Friedman's first name.

05:32:22 13 Q. Stacy Friedman, I believe.

05:32:24 14 A. Not the entirety of his testimony.

05:32:26 15 Q. Okay. Well, did you hear when I asked him questions  
05:32:29 16 about the two different types of invalidity defenses?

05:32:32 17 A. I believe so.

05:32:32 18 Q. Okay. And so one is called anticipation, correct?

05:32:37 19 A. Correct.

05:32:37 20 Q. And that's where you have to show that a single game or  
05:32:41 21 reference has every element in a patent claim for there to  
05:32:44 22 be invalidity, correct?

05:32:45 23 A. Correct.

05:32:46 24 Q. And the other one is called obviousness, correct?

05:32:48 25 A. Yes.

05:32:49 1 Q. And that's where you can combine two things together  
05:32:52 2 even if neither one of them has all the claims, as long as  
05:32:56 3 together they both have all of the claim elements, correct?  
05:32:59 4 A. I believe you can also consider the knowledge --  
05:33:03 5 general knowledge at the time from a person knowledgeable  
05:33:06 6 in the art.  
05:33:06 7 Q. Right. But -- but the point is you can -- you can take  
05:33:09 8 two things that don't have all the claim elements on their  
05:33:12 9 own and combine them together, perhaps with knowledge to  
05:33:15 10 make the invention, correct?  
05:33:17 11 A. Correct.  
05:33:17 12 Q. All right. And do you agree that you can't use  
05:33:20 13 hindsight when you do that?  
05:33:22 14 A. Correct.  
05:33:23 15 Q. Okay. All right. Now, you didn't testify on direct  
05:33:29 16 that Call of Mini has all of the elements of the '873  
05:33:35 17 patent claims; is that correct?  
05:33:36 18 A. That is correct.  
05:33:36 19 Q. In fact, you didn't testify that it has Element d,  
05:33:40 20 correct?  
05:33:40 21 A. Correct.  
05:33:42 22 Q. And so Call of Mini cannot anticipate the '873 patent,  
05:33:48 23 correct?  
05:33:48 24 A. Correct.  
05:33:49 25 Q. All right. Now, you did talk about a patent called --

05:33:55 1 I think it's Sakurai. Do you recall that?

05:33:57 2 A. Yes.

05:33:58 3 Q. All right. And that was actually a patent that was  
05:34:02 4 granted by the Patent Office; is that right?

05:34:04 5 A. Yes.

05:34:05 6 Q. Okay. And it was -- I think you said it was a patent  
05:34:07 7 that Nintendo got, right?

05:34:09 8 A. Yes, that is my understanding.

05:34:11 9 Q. Okay.

05:34:14 10 MR. MOORE: Now, Mr. -- I think we can go back to  
05:34:17 11 Mr. Groat.

05:34:18 12 Mr. Groat, can you please pull up be Plaintiff's  
05:34:22 13 Trial Exhibit No. 4, and go to the next page.

05:34:26 14 Q. (By Mr. Moore) This is the GREE '873 shooting patent  
05:34:30 15 that's at issue in this case, correct?

05:34:32 16 A. Correct.

05:34:32 17 Q. All right. Now, are you familiar that in patents, any  
05:34:39 18 prior art that the patent examiner took a look at and  
05:34:41 19 considered will be listed in the patent?

05:34:43 20 A. Yes, that is my general understanding.

05:34:46 21 Q. Okay.

05:34:47 22 MR. MOORE: Could you blow up, please, Mr. Groat,  
05:34:50 23 where -- where it says U.S. patent documents, down to where  
05:34:53 24 the abstract starts? That -- that's fine. Perfect.

05:34:59 25 Q. (By Mr. Moore) All right. Now, you see the Sakurai

05:35:02 1 patent right there?

05:35:02 2 A. I see the name Sakurai, but I'm not sure the numbers  
05:35:07 3 are the same.

05:35:08 4 Q. Okay. Well, let's look at that.

05:35:10 5 So right here, make a note, we have 9,149,720; is  
05:35:22 6 that correct? Do you see that?

05:35:22 7 A. Yes.

05:35:23 8 MR. MOORE: All right. Can we pull up, please,  
05:35:26 9 DTX-570?

05:35:27 10 Q. (By Mr. Moore) All right. And is this the Sakurai  
05:35:32 11 patent that you relied on for your obviousness opinion?

05:35:36 12 A. Could we see the -- the whole page.

05:35:38 13 Q. Absolutely. And, oh, you also have a binder in front  
05:35:42 14 of you, sir?

05:35:42 15 A. I do.

05:35:43 16 Q. Feel free if you need to look at any other sections  
05:35:46 17 from what I'm directing to you, just feel free to look at  
05:35:49 18 that, as well?

05:35:50 19 A. Yes, I believe it's the same one I was using.

05:35:54 20 Q. Okay. The 9,149,720, correct?

05:35:58 21 A. Correct.

05:35:59 22 MR. MOORE: All right. And can we go back PTX-4,  
05:36:03 23 please, and blow up that same section? That's the GREE  
05:36:04 24 patent.

05:36:04 25 Q. (By Mr. Moore) All right. So you agree that the --



05:36:06 1 that the patent examiner -- do you see the primary examiner  
05:36:10 2 was an individual named Michael Cuff?

05:36:12 3 A. Yes, I do.

05:36:13 4 Q. And that's the name of the patent examiner who works  
05:36:16 5 for the United States Patent and Trademark Office?

05:36:17 6 A. I believe so.

05:36:19 7 Q. And you understand that Mr. Cuff actually examined this  
05:36:24 8 '873 patent?

05:36:24 9 A. That would be my understanding.

05:36:25 10 Q. All right. And so he actually looked at the Sakurai  
05:36:29 11 patent, correct?

05:36:29 12 A. I would imagine so.

05:36:32 13 Q. All right.

05:36:32 14 MR. MOORE: And, in fact, could we -- could we go  
05:36:34 15 back out and blow -- take the blow -- go to the next page,  
05:36:40 16 please. Okay. Here we go. All right. Go back to the  
05:36:43 17 prior page. Sorry to jump you back and forth. I wanted to  
05:36:46 18 make sure I knew where it was.

05:36:47 19 Could you please blow up that same section again,  
05:36:52 20 Mr. Groat?

05:36:54 21 Q. (By Mr. Moore) All right. Do you see that the Sakurai  
05:36:58 22 patent has an asterisk next to it?

05:37:00 23 A. I do.

05:37:01 24 Q. All right.

05:37:01 25 MR. MOORE: Now, could you please go to the second

05:37:02 1 page, Mr. Groat, and blow out what you were looking at  
05:37:05 2 before?

05:37:06 3 Q. (By Mr. Moore) And do you see that the asterisk means  
05:37:13 4 that a particular prior art reference on the face of the  
05:37:16 5 patent was cited by the examiner?

05:37:18 6 A. Yes, I can see that.

05:37:20 7 Q. Okay. So we -- we know that Mr. Cuff, the patent  
05:37:22 8 examiner, actually looked at the Sakurai patent when he was  
05:37:26 9 deciding whether to grant GREE its patent, correct?

05:37:29 10 A. Correct.

05:37:29 11 Q. And he decided that even though Sakurai patent was  
05:37:34 12 something that was prior art, that the Patent Office would  
05:37:37 13 grant GREE the patent, correct?

05:37:40 14 A. I can't speak for the patent examiner on whether he  
05:37:43 15 determined that the patent was prior art in the legal  
05:37:45 16 sense.

05:37:46 17 Q. Well, but you have an opinion that the patent -- the  
05:37:49 18 Sakurai patent is prior art in the legal sense, correct?

05:37:52 19 A. In terms of the claims, yes, I do have an opinion.

05:37:56 20 Q. Okay. So -- well, let me rephrase then.

05:37:59 21 Mr. Cuff, the patent examiner, knew of the Sakurai  
05:38:03 22 patent and decided to grant GREE the '873 shooting patent,  
05:38:09 23 correct?

05:38:09 24 A. Yes.

05:38:09 25 Q. Thank you.

05:38:13 1 Now --

05:38:14 2 MR. MOORE: You may take that down. Thank you,  
05:38:16 3 sir.

05:38:17 4 Q. (By Mr. Moore) Now, let's move forward.

05:38:21 5 All right. Now, the second game you talked about  
05:38:24 6 relative to the '873 patent, is Sniper vs. Sniper, correct?

05:38:27 7 A. Correct.

05:38:29 8 Q. But you've never played the game Sniper vs. Sniper,  
05:38:32 9 correct?

05:38:32 10 A. That is correct.

05:38:33 11 Q. And you've never looked at the source code for Sniper  
05:38:36 12 vs. Sniper, correct?

05:38:37 13 A. That is correct.

05:38:37 14 Q. And you didn't show the jury any of the source code for  
05:38:40 15 that here today, correct?

05:38:42 16 A. Correct.

05:38:42 17 Q. Okay.

05:38:48 18 MR. MOORE: Now, Mr. Groat -- well, let me look at  
05:38:54 19 one thing. Could you actually please pull up, Mr. Groat,  
05:38:58 20 the cross-examination Slide No. 6? Go forward one, please,  
05:39:26 21 one more, and one more, and one more. Thank -- no, sorry,  
05:39:29 22 one more. I actually had the number wrong. Thank you.

05:39:34 23 Q. (By Mr. Moore) All right. Now, you see these are the  
05:39:36 24 two '873 patent claims that are at issue here, Nos. 8 and  
05:39:40 25 10?

05:39:41 1 A. Yes.

05:39:41 2 Q. Okay. And if we look at Element e, it says that the  
05:39:47 3 game server apparatus includes second circuitry configured  
05:39:52 4 to control to attack in accordance with a display position  
05:39:56 5 of the frame when the attack for the -- when the  
05:39:59 6 instruction for the attack is identified. Do you see that?

05:40:03 7 A. I do.

05:40:03 8 Q. And there's a similarly-worded claim element down in  
05:40:08 9 No. 10e; is that right?

05:40:10 10 A. Yes.

05:40:12 11 Q. Okay. And so what these require is that the server  
05:40:16 12 must control the attack in the invention of the '873  
05:40:22 13 patent, correct?

05:40:22 14 A. Yes.

05:40:22 15 Q. Not the -- the user's smartphone or the electronic  
05:40:30 16 device that the user uses, correct?

05:40:32 17 A. Correct.

05:40:32 18 Q. All right.

05:40:33 19 MR. MOORE: Could you please pull up Dr. Zagal's  
05:40:36 20 opening report at Page 346 and Paragraph 939? Blow up --  
05:40:55 21 it's 9 -- Paragraph 939 at Page -- I think it's perhaps  
05:41:01 22 your PDF Page 351. There it is. Thank you. Just blow up  
05:41:06 23 the paragraph. Thank you.

05:41:07 24 Q. (By Mr. Moore) Now, this is your expert report,  
05:41:10 25 correct, sir?

05:41:10 1 A. It is.

05:41:11 2 Q. All right. And -- and you wrote it?

05:41:13 3 A. Yes.

05:41:13 4 Q. And you were expressing the opinions that you held  
05:41:16 5 after the review of the materials in this case; is that  
05:41:19 6 right?

05:41:19 7 A. Yes.

05:41:19 8 Q. And in this paragraph, 939, you say that Sniper vs.  
05:41:24 9 Sniper discloses the electronic device/smartphone  
05:41:28 10 controlling to attack in accordance with a display position  
05:41:33 11 of the first frame when the instruction for the attack is  
05:41:37 12 identified.

05:41:38 13 Do you see that?

05:41:39 14 A. Yes.

05:41:39 15 Q. Okay. And so -- strike.

05:41:51 16 MR. MOORE: All right. You may take that down.  
05:41:53 17 Thank you.

05:41:59 18 Q. (By Mr. Moore) All right. Let me turn to your  
05:42:00 19 opinions on infringement on the '873 patent.

05:42:04 20 A. Okay.

05:42:05 21 Q. Now, you didn't show the jury any source code during  
05:42:08 22 your direct testimony regarding the Brawl Stars game; is  
05:42:12 23 that correct?

05:42:12 24 A. That is correct.

05:42:13 25 Q. In fact, you have not done a formal review of

05:42:17 1 Supercell's source code, correct?

05:42:19 2 A. A full review, I have not done.

05:42:23 3 Q. Okay. And you've -- you've seen bits and pieces  
05:42:25 4 perhaps?

05:42:26 5 A. That is correct.

05:42:26 6 Q. All right.

05:42:31 7 MR. MOORE: And let me look at Dr. Zagal's -- if  
05:42:33 8 you -- strike that.

05:42:35 9 If you could please pull up Dr. Zagal's rebuttal  
05:42:37 10 report at Appendix A.

05:42:46 11 Q. (By Mr. Moore) And feel free to look ahead with your  
05:42:50 12 binder, sir. Let me know when you get there.

05:42:52 13 A. Got it.

05:42:53 14 Q. Thank you.

05:42:54 15 MR. MOORE: Now, could you show this page and the  
05:42:57 16 next page side-by-side, please? Thank you.

05:43:02 17 Q. (By Mr. Moore) Now, this is the source code discussion  
05:43:04 18 in your report; is that correct?

05:43:07 19 A. This is a discussion, yes.

05:43:08 20 Q. All right. And looking on Page 2 at the very bottom,  
05:43:13 21 do you see Paragraph No. 10, and under source code relating  
05:43:18 22 to Brawl Stars?

05:43:18 23 A. Yes, I do.

05:43:19 24 Q. And you say there that from your review of the code,  
05:43:22 25 that the code that processes and executes the shooting

05:43:27 1 function for Brawl Stars is code that is on the server.

05:43:30 2 Correct?

05:43:30 3 A. Correct.

05:43:31 4 Q. All right. And you're citing a file -- a source code  
05:43:35 5 file that ends in .cpp, correct?

05:43:39 6 A. Correct.

05:43:39 7 Q. And that is client-side source code, correct?

05:43:42 8 A. No, I think it's server.

05:43:44 9 Q. It's server code?

05:43:46 10 A. Well, the name of the file is

05:43:54 11 LogicBattleModeServer.cpp.

05:43:54 12 Q. Okay. Do you know what language the Supercell source  
05:43:56 13 code is written in that resides on the server?

05:43:56 14 A. There's lots of different languages involved.

05:43:59 15 Q. And in your opinion C++ is one of them?

05:44:02 16 A. C++ is a language that Supercell uses, yes.

05:44:05 17 Q. Right. But does it use it on the server?

05:44:09 18 A. It is likely, yes.

05:44:12 19 Q. Do you know for sure?

05:44:13 20 A. I believe so, yes.

05:44:15 21 Q. Okay. All right. And so if somebody was talking about  
05:44:17 22 source code that ended in cp -- in .cpp, if they were  
05:44:21 23 talking about Supercell's source code, you couldn't tell  
05:44:24 24 from that designation alone whether it was server code or  
05:44:28 25 client code; is that your testimony?

05:44:29 1 A. I don't think you could tell definitively.

05:44:32 2 Q. All right. Thank you.

05:44:34 3 MR. MOORE: You may take that down.

05:45:00 4 Q. (By Mr. Moore) Okay. Let's move on to the next  
05:45:02 5 patent, the '655 patent donation patent.

05:45:05 6 You discussed the game FarmVille, correct?

05:45:08 7 A. Correct.

05:45:08 8 Q. And also the FarmVille for Dummies book that I think  
05:45:12 9 you may have up there with you?

05:45:14 10 A. Right here, yes.

05:45:15 11 Q. All right. Now, FarmVille is also not a game that  
05:45:19 12 Supercell developed, correct?

05:45:22 13 A. Correct.

05:45:22 14 Q. It was developed by Zynga?

05:45:24 15 A. Correct.

05:45:24 16 Q. All right. And we shouldn't confuse it with  
05:45:28 17 Supercell's Hay Day game, correct?

05:45:30 18 A. Correct.

05:45:30 19 Q. Now, in your work on this case, you didn't -- strike  
05:45:34 20 that.

05:45:34 21 In the work that you did on this case, you did not  
05:45:37 22 review any source code for FarmVille, correct?

05:45:38 23 A. No, not correct.

05:45:43 24 Q. You did review source code for Zynga -- from Zynga for  
05:45:52 25 FarmVille?



05:45:52 1 A. I did look at some code, yes.

05:45:57 2 Q. Okay. But you didn't show it to the jury on your  
05:46:00 3 direct testimony?

05:46:00 4 A. I did not.

05:46:01 5 MR. MOORE: All right. Can we go to Defendant's  
05:46:03 6 opening statement Slide No. 22, please? Thank you.

05:46:08 7 Q. (By Mr. Moore) Do you recall seeing this during the  
05:46:10 8 opening statement in this case?

05:46:11 9 A. Yes, I think so.

05:46:15 10 Q. Okay. And do you understand that this is an excerpt  
05:46:18 11 from the GREE invention disclosure form that ultimately led  
05:46:21 12 to the '655 donation patent?

05:46:24 13 A. That is my understanding, yes.

05:46:26 14 Q. All right. That Mr. Takeuchi prepared?

05:46:29 15 A. Uh-huh.

05:46:30 16 Q. You'll have to say yes or no for the record?

05:46:33 17 A. Yes, sorry.

05:46:34 18 Q. No problem. Thank you.

05:46:35 19 On the left we have the Japanese version in the  
05:46:39 20 original and on the right is the translation?

05:46:41 21 A. Right.

05:46:42 22 MR. MOORE: Now, if we could go two more slides  
05:46:45 23 over to Slide 22.

05:46:48 24 Q. (By Mr. Moore) Do you recall seeing this slide in the  
05:46:52 25 Supercell Defense counsel opening?

05:46:53 1 A. I'm not sure, to be honest.

05:46:55 2 Q. Okay. Well, do you see that we have the same diagram  
05:46:57 3 with a FarmVille logo as well as some pictures of presents?

05:47:03 4 A. Yes.

05:47:03 5 Q. All right. But that's not from the FarmVille book,  
05:47:05 6 right?

05:47:05 7 A. No, I don't think so.

05:47:06 8 Q. You could read through that whole book and you wouldn't  
05:47:10 9 see this image that was shown in the opening statement,  
05:47:12 10 correct?

05:47:12 11 A. I don't think you see that exact image.

05:47:14 12 Q. All right. Well, let's look at the FarmVille book.

05:47:17 13 MR. MOORE: And if we could pull up, please,  
05:47:21 14 DX-561 and turn to Page 86.

05:47:29 15 Q. (By Mr. Moore) All right. And, again, if you want to  
05:47:31 16 follow along in the actual book, it looks like we're on  
05:47:34 17 Page 66, correct?

05:47:35 18 A. Yes.

05:47:36 19 Q. All right. Do you see where there is a heading at the  
05:47:39 20 bottom of the page that says Accepting and Using Gifts?

05:47:42 21 A. I do.

05:47:44 22 MR. MOORE: Could you please blow up from there to  
05:47:46 23 the bottom, please. That's perfect. Thank you.

05:47:51 24 Q. (By Mr. Moore) Now, this wasn't one of the pages or  
05:47:55 25 images from FarmVille for Dummies that you showed in your

05:47:56 1 direct testimony, was it?

05:47:58 2 A. I don't think so, but it is familiar, so I'm not sure  
05:48:03 3 if it is on my slides or I'm recalling from my previous  
05:48:09 4 looking at the book.

05:48:11 5 Q. Okay. Do you see under this header the first sentence:  
05:48:15 6 Just as in real life, you have to actively accept a gift in  
05:48:20 7 FarmVille before you can open and use it?

05:48:21 8 A. Yes.

05:48:22 9 Q. And then it says: Unfortunately, the process for  
05:48:26 10 accepting a gift in FarmVille isn't as straightforward as  
05:48:31 11 just taking a wrapped box somebody hands you, correct?

05:48:34 12 A. Correct.

05:48:34 13 Q. And the last sentence in that paragraph says:  
05:48:37 14 Recipients of FarmVille gifts have to take action to accept  
05:48:42 15 those gifts before using them. Do you see that?

05:48:44 16 A. Yes.

05:48:44 17 Q. All right. And then we see a series of steps that  
05:48:47 18 start with No. 1 there; is that right?

05:48:49 19 A. Yep.

05:48:50 20 Q. The first step is to click on a button in the play  
05:48:54 21 area, correct?

05:48:55 22 A. Correct.

05:48:56 23 MR. MOORE: And if we go to the next page, please,  
05:48:59 24 87 [sic], if you would please blow up No. 2 there.

05:49:02 25 Q. (By Mr. Moore) The second step is that the player has

05:49:05 1 to click the accept button, correct?

05:49:07 2 A. Correct.

05:49:09 3 MR. MOORE: And then go down to Step No. 3.

05:49:11 4 Q. (By Mr. Moore) The next step to take to accept the  
05:49:15 5 gift is to click the accept and play button next to the  
05:49:21 6 gift you want to accept, right?

05:49:21 7 A. Right.

05:49:22 8 MR. MOORE: And then let's go to the next page,  
05:49:25 9 please, Page 80 -- all right. Go down a little farther,  
05:49:32 10 please. I think it's actually on the next page, 89 [sic].  
05:49:36 11 Here we go, yes.

05:49:37 12 Could you blow up there where it says warning.  
05:49:41 13 You see the little warning emblem there on the left, blow  
05:49:46 14 up that paragraph, please? Thank you.

05:49:48 15 Q. (By Mr. Moore) All right. Next to this little warning  
05:49:51 16 symbol, you see that it says: Gifts expire two weeks after  
05:49:54 17 they are sent?

05:49:55 18 A. Uh-huh, yes, I do.

05:49:56 19 Q. All right. And so in FarmVille, if the recipient of a  
05:50:01 20 gift does not accept it within two weeks, then the gift  
05:50:04 21 will be removed, correct?

05:50:05 22 A. That's what this message says, yes.

05:50:09 23 Q. All right. Thank you very much, sir.

05:50:26 24 MR. MOORE: I pass the witness, Your Honor.

05:50:27 25 THE COURT: All right. Is there redirect?

05:50:29 1 MR. SACKSTEDER: Yes, Your Honor.

05:50:29 2 REDIRECT EXAMINATION

05:50:29 3 BY MR. SACKSTEDER:

05:50:29 4 Q. Dr. Zagal, Mr. Moore just took you through processes  
05:50:38 5 for accepting a free gift, right?

05:50:40 6 A. Correct.

05:50:40 7 Q. Is that a free gift that is given to the user by  
05:50:43 8 another user?

05:50:44 9 A. Correct.

05:50:44 10 Q. So that's the first object in the claim, correct?

05:50:46 11 A. Correct.

05:50:47 12 Q. All right. And which object is it your opinion that  
05:50:53 13 you have to automatically receive or have to be -- not  
05:50:55 14 automatically, but you have to receive as an if/then, is  
05:50:59 15 that the first object or the second object?

05:51:01 16 A. The second object, the bonus or incentive object.

05:51:05 17 Q. Does it matter whether a prior art reference was made  
05:51:08 18 by Supercell or GREE or somebody else?

05:51:10 19 A. It is my understanding that, no, it doesn't matter.

05:51:12 20 Q. Does it matter whether you personally knew about it at  
05:51:17 21 the time?

05:51:17 22 A. No.

05:51:18 23 Q. All right. And Mr. Moore mentioned the Sakurai patent,  
05:51:26 24 correct?

05:51:26 25 A. Correct.

05:51:26 1 Q. And he showed you that it had been cited in the

05:51:29 2 prosecution of the '6 -- of the '875 [sic] patent?

05:51:42 3 A. Correct.

05:51:42 4 Q. The Call of Mini Sniper game was not cited in the

05:51:48 5 prosecution of the '873 patent, correct?

05:51:48 6 A. Correct.

05:51:49 7 Q. And was the Sniper vs. Sniper Online game cited in the

05:51:51 8 prosecution of the '873 patent?

05:51:52 9 A. It was not cited.

05:51:54 10 Q. And so the -- is it correct that the patent prosecutor

05:51:56 11 did not have either of those prior art games in front of it

05:52:00 12 when it was considering whether to issue the '873 patent?

05:52:03 13 A. That would be my understanding, yes.

05:52:07 14 Q. What did you use in your opinion the Sakurai patent

05:52:14 15 for?

05:52:14 16 A. I used it as an example illustrating the -- the

05:52:18 17 commonly held notion at the time that certain functionality

05:52:22 18 of a program can run on the server or on the client.

05:52:24 19 Q. Did you use it for any other purpose in your analysis?

05:52:27 20 A. I don't think so.

05:52:28 21 Q. And did you use it to show that there was a frame that

05:52:32 22 indicated a -- a shooting effective range?

05:52:36 23 A. No, I did not.

05:52:37 24 Q. Did you use it to show that there was a first touch

05:52:40 25 operation that did certain things?

05:52:41 1 A. I did not.

05:52:42 2 Q. Did you use it to show that there was a second touch  
05:52:45 3 operation that -- that caused the shot to be fired?

05:52:47 4 A. I did not.

05:52:48 5 Q. Where did you find those pieces of the claim?

05:52:52 6 A. In the game.

05:52:54 7 Q. All right. In the two games?

05:52:56 8 A. Yes.

05:52:57 9 Q. Could you tell how Brawl Stars operated as it related  
05:53:05 10 to the claims of the '873 patent by playing the game?

05:53:09 11 A. Could you be more specific, please?

05:53:10 12 Q. Yeah, you -- you went through how the game operates,  
05:53:14 13 correct?

05:53:14 14 A. Yes, how shooting works in the game and how aiming  
05:53:17 15 works, yes.

05:53:18 16 Q. And -- and what did you use to illustrate that?

05:53:20 17 A. I illustrated that with videos I created.

05:53:23 18 Q. And the videos were of what?

05:53:24 19 A. Of the game.

05:53:26 20 MR. SACKSTEDER: No further questions. Thank you.

05:53:27 21 THE COURT: Further cross-examination?

05:53:29 22 MR. MOORE: No, thank you, Your Honor.

05:53:31 23 THE COURT: All right. Dr. Zagal, you may step  
05:53:33 24 down.

05:53:33 25 THE WITNESS: Thank you, Your Honor.

05:53:34 1 THE COURT: Ladies and gentlemen, we're going to  
05:53:43 2 recess for the day at this juncture. I'm going to ask you  
05:53:46 3 as you leave the courtroom to take your juror notebooks and  
05:53:49 4 leave them closed on the table in the jury room.

05:53:52 5 I'll remind you to be back ready to go about 8:30  
05:53:55 6 in the morning. I'll also remind you -- you may step down,  
05:54:00 7 Dr. Zagal.

05:54:01 8 I'll also remind you to follow all the  
05:54:03 9 instructions that I've given you throughout the trial  
05:54:06 10 regarding your conduct, including among them not to discuss  
05:54:09 11 the case with anyone or with yourselves in any way.

05:54:12 12 Travel safely to your homes. We'll see you  
05:54:15 13 tomorrow. You're excused at this time.

05:54:16 14 COURT SECURITY OFFICER: All rise.

05:54:18 15 (Jury out.)

05:54:25 16 THE COURT: Please be seated.

05:54:45 17 Counsel, for your edification, it appears,  
05:54:53 18 according to the records that the Court is keeping, that  
05:54:58 19 the Plaintiff has 1 hour and 31 minutes remaining of  
05:55:01 20 designated trial time, and the Defendant has 1 hour and 25  
05:55:04 21 minutes remaining of designated trial time.

05:55:07 22 Also, I'd like the parties to file a short  
05:55:18 23 amendment to the final pre-trial order memorializing the  
05:55:21 24 actual claims that we've gone to trial on. Your last  
05:55:24 25 pending version of the final pre-trial order lists



05:55:29 1 30-something claims.

05:55:30 2 I'd like it clear in the record as to the actual  
05:55:33 3 claims that have been presented to this jury during the  
05:55:35 4 trial, in addition to what's in the transcript. So if you  
05:55:40 5 would both meet and confer and file a short, one-page  
05:55:45 6 supplement to the final pre-trial order, the Court would  
05:55:49 7 appreciate it.

05:55:49 8 Also, I remind you that in about five minutes, you  
05:55:54 9 should submit your jointly-prepared and revised final jury  
05:55:58 10 instructions and verdict form, which we'll be looking for.  
05:56:01 11 Make sure the Court receives that in a Word format.

05:56:03 12 I'll be in chambers in the morning. If you have  
05:56:09 13 disputes which are not able to be resolved overnight, then  
05:56:13 14 please get them to me, as I've directed, not later than  
05:56:18 15 7:00 o'clock in four distinct duplicate binders so that by  
05:56:21 16 7:30, I'll be available to meet with you.

05:56:24 17 We had a problem with that today. I'll trust we  
05:56:27 18 won't have a similar problem going forward.

05:56:29 19 All right. Are there questions from either  
05:56:31 20 Plaintiff or Defendant at this juncture?

05:56:33 21 MS. SMITH: We may have the same question.

05:56:36 22 MR. DACUS: I bet we do. Go ahead.

05:56:38 23 MS. SMITH: I think we do. Your Honor, has  
05:56:40 24 Your Honor decided yet if we're closing tomorrow afternoon  
05:56:43 25 versus Thursday morning?

05:56:44 1 THE COURT: Well, it's clear that based on the  
05:56:46 2 time remaining, we should finish the evidence in the  
05:56:50 3 morning tomorrow.

05:56:51 4 MS. SMITH: Yes, Your Honor.

05:56:52 5 THE COURT: My intention, if that holds true, is  
05:56:55 6 to release the jury in the afternoon, spend the afternoon  
05:56:58 7 working through the 50(a) motions, the informal charge  
05:57:04 8 conference, and the formal charge conference, so that first  
05:57:05 9 thing Thursday morning, I can present my final instructions  
05:57:06 10 to the jury, and the parties can present their closing  
05:57:08 11 arguments.

05:57:09 12 I would hope we could get the case to the jury  
05:57:12 13 around the noon hour on Thursday, which will leave us in a  
05:57:17 14 position, I think, to have some confidence that we'll have  
05:57:21 15 a verdict either late Thursday or Friday. That's -- that's  
05:57:26 16 my plan at this point.

05:57:26 17 MS. SMITH: We appreciate the time to prepare on  
05:57:30 18 Wednesday night, Your Honor. Thank you.

05:57:31 19 THE COURT: And as both Ms. Smith and Mr. Dacus  
05:57:37 20 know from my prior practice, as long as each side is  
05:57:38 21 adequately staffed by counsel at the 50(a) motions and the  
05:57:38 22 informal charge conference and the formal charge  
05:57:42 23 conference, counsel that will be presenting the actual  
05:57:45 24 closing arguments are not required to be present, and you  
05:57:47 25 can use that time to prepare for those closing arguments.

05:57:50 1 Do you know at this point who's going to present  
05:57:53 2 closing arguments for the parties?

05:57:55 3 MR. MOORE: Your Honor, I will be doing so for the  
05:57:56 4 Plaintiff.

05:57:57 5 THE COURT: Both the first and the second  
05:57:58 6 Plaintiff's closing?

05:57:59 7 MR. MOORE: Yes, Your Honor.

05:58:00 8 THE COURT: How about for Defendant?

05:58:02 9 MR. DACUS: Mr. Sacksteder, more than likely,  
05:58:04 10 Your Honor, but I had a question about time, what the Court  
05:58:08 11 anticipates. We've got five patents here.

05:58:08 12 THE COURT: I've already told you, you got 40  
05:58:10 13 minutes a side for your closing arguments.

05:58:14 14 MR. DACUS: I apologize, I didn't -- if you've  
05:58:16 15 already told us that, I'd forgotten.

05:58:17 16 THE COURT: That's -- that's already a set number.

05:58:17 17 MR. DACUS: Understood.

05:58:19 18 THE COURT: I won't penalize you for trying. We  
05:58:23 19 can make it 30 if you'd like.

05:58:23 20 MR. DACUS: I should have had Ms. Smith ask for  
05:58:26 21 me. She probably --

05:58:28 22 THE COURT: Would you like to make it 30,  
05:58:31 23 Mr. Dacus?

05:58:32 24 MR. DACUS: I'll stick with the 40, Your Honor.  
05:58:35 25 Thank you.

05:58:35 1 THE COURT: All right. Are there any other  
05:58:36 2 questions?

05:58:38 3 MS. SMITH: No, Your Honor.

05:58:38 4 THE COURT: Anything further from Defendant?

05:58:41 5 MR. DACUS: No, Your Honor. Thank you.

05:58:47 6 THE COURT: All rise.

05:58:53 7 COURT SECURITY OFFICER: All rise.

05:58:55 8 (Recess.)  
9  
10

11 CERTIFICATION  
12

13 I HEREBY CERTIFY that the foregoing is a true and  
14 correct transcript from the stenographic notes of the  
15 proceedings in the above-entitled matter to the best of my  
16 ability.  
17  
18

19 /S/ Shelly Holmes 9/15/2020  
SHELLY HOLMES, CSR, TCRR Date  
20 OFFICIAL REPORTER  
State of Texas No.: 7804  
05:58:56 21 Expiration Date: 12/31/20  
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